United States Court of Appeals

for the Second Circuit

PETITIONER'S BRIEF AND APPENDIX

NO. 76-4272

United States Court of Appeals

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD

Petitioner,

v.

SAMUEL LIEFER AND HARRY OSTREICHER, A CO-PARTNER, d/b/a RIVER MANOR HEALTH RELATED FACILITY, AND LOCAL 531, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

Respondents.

ON APPLICATION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

APPENDIX

VOLUME II

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Washington, D. C. 20570.

UNITED STATES COURT OF APPEALS
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MR. COFFEY: Yes, Your Honor.

Q (By Mr. Coffey) Mrs. Robinson, do you speak to Mr. Hazell on most nights that you work with him?

A Well, if I'm off, I don't see Mr. Hazell, so I couldn't speak to him then.

Q When you do work with him, do you speak to him on the nights you do work?

A Occasionally, yes.

We see each other.

Q Did you speak to him on the 10th?

A I don't know for sure.

Q Of January.

A I don't know for sure if I was on that night.

Q You identified the time record book, Miss Robinson, that you were.

A Let me see if I was on on the 10th.

MR. POLLACK: Your Honor, are you and the Board going to be asked to accept that without any other basis of comparison that this witness will know whether or not she spoke with an employee on the 10th?

JUDGE COHN: I'm going to evaluate it.

First, she said she doesn't remember, she doesn't know.

She's already testified prior to this that she worked on the --

THE WITNESS: On the 10th, they were all here.

JUDGE COHN: -- on the 10th.

Now, she's going to, presumably, she's --

I can testify for her.

Presumably, she's going to say, if I worked on the 10th, I suppose I spoke to him.

Whatever that means, I don't know.

Q (By Mr. Coffey) Is it possible, Mrs. Robinson, that Mr. Hazell told you that Mrs. Frazer had been discharged on the 10th and not on the 9th?

MR. KAUFMAN: Objection.

MR. POLLACK: Join in that objection.

JUDGE COHN: On what basis are you objecting?

MR. KAUFMAN: The word, "possible," is purely speculative, has no meaning, and is not asking the witness to testify about a state of facts.

JUDGE COHN: Sustain the objection.

Q (By Mr. Coffey) Could Mr. Hazell have told you that Mrs. Frazer had been discharged on the 10th and not on the 9th?

A I don't remember.

MR. POLLACK: Objection.

The word, "Could," is merely a substitute for, "possible."

It's the same question; same objection.

JUDGE COHN: Still the same speculation.

It's still the same speculation.

Q (By Mr. Coffey) Did Mr. Hazell tell you, on the 10th of January, that Mrs. Frazer had been discharged, rather than on the 9th?

A Yes.

JUDGE COHN: He told you on the 10th of January --

THE WITNESS: Yes.

JUDGE COHN: Wait.

Let me go back.

Listen to my questions.

You said you worked on the 10th, right?

Did you work on the 10th?

THE WITNESS: Yes.

JUDGE COHN: Did you speak to Hazell that night?

THE WITNESS: I remember he was the one that told me.

JUDGE COHN: I asked you if you spoke to Hazell that night, yes or no.

THE WITNESS: Yes.

JUDGE COHN: Okay.

Now, if you -- you spoke to Hazell that night.

What did he tell you?

THE WITNESS: He told me that Frazer was fired.

JUDGE COHN: Okay.

Did he tell you when Frazer was fired?

THE WITNESS: I don't remember.

JUDGE COHN: Okay.

That's all.

MR. COFFEY: That's all, no further questions.

MR. KAUFMAN: I just have one question.

RECROSS EXAMINATION

Q (By Mr. Kaufman) During your examination, during the time I was examining you, and after you had a chance to refresh your recollection, you testified that on the night you signed the card, Mr. Frazer -- Mr. Hazell told you that Miss Frazer had been fired.

Is that a fact?

A On the night I signed the card?

Q Yes.

A No, I didn't say that.

Q Let me show you your Affidavit.

I show you your Affidavit, Paragraph 5, and ask you to read that again.

Take your time, don't be nervous.

(Whereupon, the witness peruses the document.)

Q Have you had a chance to read that now?

A Yes.

Q I ask you again, on the night that Mr. Hazell told you about Miss Frazer's discharge, was that the

night that he asked you to sign a card for 144?

A I don't remember.

Q Have you read your Affidavit?

A I still don't remember.

Q So that, when you told the Board what was in this Affidavit, your recollection was better then than now?

Did you tell the Board the truth at the time?

Did you tell Mr. Coffey the truth?

A Yes, I did.

Q And is what's contained in Paragraph 5, the truth?

A Yes.

Q And if I read Paragraph 5, would that be the truth?

A I guess so.

Q Would you read Paragraph 5 to the reporter, out loud?

MR. COFFEY: Objection, Your Honor.

JUDGE COHN: Overruled.

Q Would you read that to the reporter, please?

A "One evening --"

I can't make out this handwriting very clear, anyway.

Q Would you like me to read it?

You can look over and make sure I'm reading it right.

JUDGE COHN: Do you want to follow it?

MR. COFFEY: We no longer have a copy of it.

JUDGE COHN: Here's a copy.

MR. POLLACK: Here's a copy laying right on the table.

Q "One morning in early January, 1975, I was on the second floor with Williams and Hazell. Hazell said he called up Labor Relations and got all the information which he proceeded to tell us about. He said he'd gone down to the Labor Relations Board about Frazer's discharge and said that they had told him his rights and had told him that the home should not have discharged Frazer, as she didn't get warnings or something to that effect. He brought us Union cards for 144 and Williams and I signed the cards as did other employees on the evening and the day shift. I don't know if Miss Russell knew of Hazell's distributing cards for Local 144."

Was that the truth when you told that to Mr. Coffey?

A I think so.

MR. KAUFMAN: I have no further questions of this witness.

MR. POLLACK: Nor do I.

CSA Reporting

Q Can you tell me the circumstances under which you were given General Counsel's 5-X?

A You mean, given the card?

Q Yes.

A Sometime in November, Miss --

MR. KAUFMAN: Your Honor, I'm going to object to the question at this time, only because there's been no testimony that this man is an employee of River Manor Nursing Home.

Q Are you an employee of River Manor Nursing Home, Mr. Williams?

A Yes, I am.

Q When were you hired?

A 27th of October.

Q Of what year?

A '74.

Q As what?

A Orderly.

Q Orderly?

A Yes.

Q On what shift?

A 12:00 to 8:00.

Q Okay.

Can you tell us now, Mr. Williams, the circumstances under which you got General -- Party in Interest 5-X?

A Sometime in November, on the 12:00 to 8:00 shift, Miss Russell gave to me an authorized 531 card.

Q Did she give you that card?

A Yes.

She said, Miss Harrington gave it to her to give to me to sign, and she wanted it back by morning.

I didn't sign it at the same time.

Then Miss Russell asked me for the card.

I said, why she wanted the card so quick.

She said, Miss Harrington say anyone who doesn't sign the card will be out, or fired.

MR, KAUFMAN: I'm sorry, Your Honor, I'm not following any of this testimony.

Can the reporter read it back?

JUDGE COHN: Read back the last answer.

(Whereupon, the requested answer was read back the the reporter.)

Q (By Mr. Coffey) And what happened after Mrs. Russell gave you the card?

A I took it and bring it down to my locker in the basement.

Q What happened at that time?

A The following morning, I went, got off from work a little after 8:00, she asked me for the card, as I was leaving.

Q Who asked you for the card?

A Miss Russell.

Q What happened at that time?

A Then I went down to the basement and got the card.

Q What did you do with the card?

A I signed the card.

I gave it back to her.

MR. COFFEY: Mark this as General Counsel's 16 for identification.

(General Counsel's Exhibit 16 was received and marked for identification, of this date.)

MR. COFFEY: Your Honor, I move that Exhibit 5-X be placed in evidence.

MR. POLLACK: May we see the card?

(Whereupon, Mr. Coffey hands the requested document to Mr. Pollack.)

MR. POLLACK: No objection.

MR. KAUFMAN: No objection.

JUDGE COHN: All right.

Party in Interest 5-X is received.

(Whereupon, the above referred to was received and marked Party in Interest Exhibit 5-X in eivdence.)

Q (By Mr. Coffey) I show you now General Counsel's 16 for identification.

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A I did.

Q Can you tell us under what circumstances you received General Counsel's 16 for identification?

A We had a conversation on the second floor.

Q Who is, "We?"

A Hazell, Brenda and I.

I mean, Frazer.

Q And did --

Now, did you receive the card during conversation between Hazell, Frazer and you, or just between you and Hazell or who was there when you got the card?

A Who --

Q Who gave you the card?

A Hazell gave me the card.

Q Where were you when he gave it to you?

A Second floor staff room.

Q What day was it?

A The same day that's on the card.

Q What did you do with it after you got it?

A I signed it and I gave it back to him.

Q Was anybody else present at the time?

A I can't remember if anybody was present.

JUDGE COHN: What was that answer?

THE WITNESS: I can't remember if anybody was present.

Q Besides you and Hazell?

A That's right.

Q Now, I direct your attention to a date earlier than the date that you signed the card for Mr. Hazell, in early January, 1975; in the staff room.

Did you have a conversation at any time, early in January, 1975, in the staff room, of River Manor?

A Yes.

Q Who was present at that time?

A Frazer, Hazell, Brenda and I.

Q Brenda Frazer?

A Yes.

Q What were you talking about?

A Different unions and so forth.

Q Can you please tell me, to the best of your recollection, what the conversation was?

A It was -- We was talking about Local 144 Union and 531.

Q Yes, and what was said?

A I said, you know, 144 was a better Union to 531, because the benefits was better.

Q And what else was said?

A I can't remember what was said, but Hazell said, it was -- Frazer said, she was going to get some information from the Local -- from the Labor Board,

concerning Unions and so forth.

Q Was it decided who was supposed to go to the Labor Board at that time?

MR. POLLACK: Objection.

The testimony was that somebody was going to get some information.

There's nothing in the record from this witness about going.

JUDGE COHN: Overruled.

Q Do you recall if there was any conversation about anyone going to the State Labor Relations Board at that time?

A Frazer said that she was going to go.

Q Besides you, yourself, Mr. Hazell, Miss Frazer, who was present in the staff room at the time you had a -- you had that conversation?

A Mrs. Russell.

Q What was she doing at that time?

A I think she was writing charts.

Q I direct your attention to the 18th of January, 1975, Mr. Williams.

What happened at that time?

A 18th of January?

Q Yes.

A I came into the first floor staff room for my

check.

Q Who do you get your check from?

A Mrs. Russell.

Which was in an envelope.

She give to me another card to sign from 531.

I signed it and I gave it back to her.

MR. POLLACK: May I have that anser, Your Honor?

JUDGE COHN: He signed it and gave it back to her.

MR. POLLACK: Thank you.

Q Did she give you one card, two cards or just how many cards did she give you?

A She gave me one --

No, two cards she gave me.

MR. COFFEY: Can we do our --

Your Honor, off the record for a second?

JUDGE COHN: Yes.

(Discussion off the record.)

JUDGE COHN: Back on the record.

MR. COFFEY: Your Honor, in an off the record discussion, it became apparent that General Counsel's 16 for identification was the Affidavit of Clara Mercado, which was never submitted into evidence, and that the authorization card signed by Dennis Williams for Local 144, on 1-10-75, which we have put in as

JUDGE COHN: Okay.

Received.

Let's proceed now.

MR. COFFEY: Okay.

Q (By Mr. Coffey) Can you tell me what your relationship is to Miss Russell?

A My relationship to her?

Q Yes.

A She's only the head nurse at night.

Q On what shift?

A 12:00 to 8:00.

Q Are there any other nurses on duty at that time?

A No.

She was the only one.

Q What does she do?

A You mean, at nighttimes?

Q Yes.

A She write charts.

She makes rounds on the floors to see that everybody does their work, particularly aides and orderlies.

Q Who assigns you to your floors at night?

A Miss Russell does.

Q In what way does she do that?

A She tells you what floor to go to.

Q Does she ever give warnings?

A What?

Q Does she ever give warnings?

A She never gave to me a warning.

You know, she only tell me one time, one occasion, Miss Harrington don't like nobody to be late.

MR. POLLACK: I'm sorry?

JUDGE COHN: She, on one occasion, told him, Miss Harrington don't like people --

THE WITNESS: Orderlies.

JUDGE COHN: Aides and orderlies to be late.

MR. POLLACK: Thank you.

Q (By Mr. Coffey) If an orderly doesn't come in for a shift, who calls a replacement?

A Miss Russell does.

One time she called me, at one time.

Q When was that?

A Sometime in, I can't remember the exact date, but she called me and I came in.

Q Was it during December?

A I don't remember the exact date.

Q Can you give us an approximation?

A I wouldn't, you know, --

She called me the last time, on the 20th of May, that's what I remember.

Mr. Coffey's asking him questions relative to his employment without putting a time frame on it, and those questions that are being answered, if I understand the witness, from his answers, he's answering it to his experiences maybe today or a month ago, and I would appreciate it if Mr. Coffey would --

JUDGE COHN: Yes.

The objection is well taken.

I received the one about a call in May, realizing what the date was, but when you're talking in terms of how many people are working at the same shift that she does, in view of the fact that it's apparent that this is a new enterprise, a recently new enterprise, things may be a lot different today than they were in December and January or November that we're talking about.

Q (By Mr. Coffey) Were there five orderlies on your shift in --

JUDGE COHN: Why don't you ask him how many orderlies were on in a certain date that's within -- encompassed by the Complaint?

Q How many orderlies were on Mrs. Russell's shift in December?

A In December?

Q Of '74.

A I can't remember.

Hazell and myself and other guys, I can't remember their name.

Q Were there more than three?

Aides and orderlies.

A Yes.

Q Could there have been more than four?

A Aides and orderlies?

Q Yes.

A Yes.

Q To your knowledge, has Mrs. Russel's duties changed in the times you've worked there?

A Up to now?

Q Yes.

A I, -- It's a long time, I don't know, I don't know -- I haven't seen her for a long time now, there are new people over there. So, I don't know what's going on.

Q If orderlies had a problem in December of 1974, who did they go to on the night shift?

MR. KAUFMAN: Objection.

Unless we talk about specific orderlies, or whether this witness had --

JUDGE COHN: No.

I think he ought to talk about a specific problem, rather than a specific orderly.

MR. KAUFMAN: Yes.

Q If you had a problem relating to work, who would you go to at night?

A Miss Russell.

MR. KAUFMAN: Objection, Your Honor.

I don't think that was Your Honor's intention.

JUDGE COHN: All right, I'll allow it.

Q If you had a problem relating to your duties, who would you go to?

A Mrs. Russell.

Q If an emergency came up relating to patients or to anything, any emergency of any kind, who would you go to?

MR. KAUFMAN: Objection. Same objection.

JUDGE COHN: Overruled.

MR. KAUFMAN: May I have a standing objection to this line of questioning, if he's not going to talk about specific instances?

JUDGE COHN: Yes.

MR. KAUFMAN: Thank you.

Q If there was an emergency, who would you go to?

A Mrs. Russell.

Q Did an emergency ever arise, as far as you know?

JUDGE COHN: Well, why don't we do something?

You know, an emergency, an emergency could mean

a fire, a toilet overflowing, or a patient that's very ill.

Now, why don't you get down to some brass tacks here?

I mean, in one instance he may be calling some building maintenance guy, you know.

Q If a faucet leaked, who would you call?

MR. KAUFMAN: Objection.

Your Honor, I have to object to that question.

JUDGE COHN: I'll allow it.

Go ahead.

Q Answer the question.

A Mrs. Russell.

She's the night charge nurse.

Q Did that ever occur?

A What?

Q Did you ever call her about a faucet leak?

A I never.

Q If there was a --

MR. KAUFMAN: What was the answer to that; never?

JUDGE COHN: Never.

THE WITNESS: Never.

Q Did you ever call her about trouble with a patient?

CSA Reporting

A Yes, I did.

MR. KAUFMAN: Can we have a time on that?

Q Can you give us a time?

A I'm -- I can't remember the exact time.

It was during the night.

Q Do you know around what day it was?

Around what time of the year?

Was it during the wintertime?

A Yes, it was in the wintertime, but I don't know what month.

Q Was it before or after Hazell was discharged?

A I don't know.

He could be there and he could be off.

I don't know.

Q Who collects all the keys at the end of the shift?

A Mrs. Russell.

JUDGE COHN: Keys to what?

THE WITNESS: For the staff room and so forth.

Q What other keys does she collect, besides the key to the staff room?

A That's the only key she gives to us.

Q Where does Mrs. Russell sit?

A In the first floor staff station.

MR. COFFEY: No further questions.

MR. POLLACK: May we have the Affidavit?

(Whereupon, Mr. Coffey hands the requested document to Counsel.)

JUDGE COHN: Off the record.

(Discussion off the record.)

JUDGE COHN: Back on the record.

Cross examination

CROSS EXAMINATION

Q (By Mr. Pollack) Mr. Williams, I show you 5-X, which is your membership card, your application for membership in Local 531?

A That's right.

Q I ask you to look at the date on that card.

A Okay.

Q Do you see the date?

A Yes.

Q Now, I ask you if you signed that card in the morning of the 27th?

You testified, Mr. Williams, that you were given the card when you first came on duty, approximately, you put it in your locker, or when you were leaving in the morning, you were asked to sign the card?

A That's right.

Q I'm asking you, the 27th is the date that appears on the card, correct?

CSA Reporting

A That's right.

Q Now, was that the morning of the 27th that you signed the card?

A It had to be.

Q I beg your pardon?

A That's right.

Q That's right.

Now, did you sign any other card in November for Local 531?

A No.

JUDGE COHN: What's that answer?

THE WITNESS: No.

MR. POLLACK: No.

Q I show you a handwritten document and I ask you to look at this signature, and ask you if that's your signature?

A That's right.

Q I ask you to read the first sentence of Paragraph 3 to yourself, please.

Read it to yourself, please.

(Whereupon, the witness complies with the request of Mr. Pollack.)

Q If you finished the first sentence, that would really do, Mr. Williams.

A Okay.

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A Okay.

Q Now, when you testified earlier today that it was in early November when you signed the card, was that correct?

A Yes.

Q That was correct.

And that was the time when Miss Russell said the statement to you about, you better sign the card?

A That was the day before.

The night before.

Q In early November?

A It was in November.

Q But it wan't early November?

A I --

Q I beg your pardon?

A It was in November, I know.

Q When you said, it was early November, you were in error?

Is that correct?

A Maybe I made a mistake, but I know it was in November.

Q Did you make any other mistakes in your testimony that you'd like to tell us about?

A No.

Q All right.

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A No.

Q All right.

Now, you testified that in January, when Miss Russell gave you some things, when she was giving you your paycheck, she gave you how many cards to sign?

A One card.

Q One card.

One card?

A It was a different card from this one?

Q She only gave you one card to sign?

A Yes.

Q I see.

And if I recall your saying that you got two cards, then I'm in error?

A No.

It's two cards.

She gave me one, she gave me this one the first time, and then she gave me another one.

Q A single card in January?

A Yes. I cannot -- I'm not sure if it's a single card, but she gave me a card.

Q A card?

A Yes.

Q That required one signature?

A My signature.

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Q All right.

Did it require any other information about you?

A How much do I work for.

Q What about whether you were married or not?

A I can't remember.

Q Social Security number, do you know if that was required?

A I can't remember.

Q Your date of birth?

A I can't remember.

All I know is, she gave me a card.

Q But you can't remember what was on that card?

A I know it was a card for, you know, it was something from, I was not interested in it, it was something from 531, I know, so I didn't bother reading it.

I just signed it and gave it back to her.

Q Now, going back again to November, when you signed this card, showing you again your application for membership card, tell me if you would, who was present when you were first given the card by Miss Russell.

A Brenda and Hazell.

Q I beg your pardon?

A Brenda and Hazell.

Q Brenda and Hazell were both present.
That's Brenda Frazer?
A Yes.
Q And Albert Hazell?
A Yes.
Q Were they given cards?
A I can't remember.
I cannot remember if they was given cards, too.
I know I got a card and they were present.
Q Where was this?
A When I got the card?
Q Yes.
A In the first floor staff room.
Q In the staff room?
A First floor.
Q And in relation to the meeting --
What was going on in the staff room at the time?
A At the time?
Q Yes.
When you were given this card, what was going on there?
A Miss Russell told me to sign the card.
Q No, I understand that.
A Yes.
Q But why were you in the staff room?

A I had just come in on my shift.

Q Was there anybody there besides Frazer and Hazell?

A I don't remember.

I don't remember who was there.

Q Did Miss Russell say anything to you, not to tell any other employees about the card that you were being given?

A No, she never did.

Q Did she say anything to anybody, in your presence, when you were given the card, not to say anything to other employees about being given the card?

A Not to --

Q I beg your pardon?

A Not to my knowing.

Q You didn't hear her?

A I didn't hear her.

Q Did you hear her talk to Frazer or Hazell at all?

A She talked to them.

I can't remember what she said.

Q Was Reeves present at that time?

A I don't know.

I don't remember.

Q What about Miss Allen, was she present at that time?

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A I don't remember.

They're the only two I remember.

Q Okay.

Now, tell us again what she said to you when she gave you the card first?

A She told me to sign the card.

She said that Miss Harrington gave her the card to give to me, and she wanted -- she said to sign it, she wanted it back by morning.

Q Now, where was Frazer and Hazell in relation to you when Miss Russell made this statement?

A They were present.

Q Were they right next to you?

A They was in the staff room.

I can't remember how far or close they were.

Q Were they part of the conversation that was taking place between you and Russell?

A You mean, between what I was holding?

Q You and Russell were talking about that card, which is in front of you?

A Yes.

Q Were Hazell and Frazer part of that talk?

A Yes, they were.

Q They were?

A Yes.

Q And this was, therefore, on the after twelve midnight, on January -- on November 27th, right?

A At the time I signed it --

I didn't sign the card on the 27th.

I signed it in the morning.

Q Of the 27th?

A She gave me the card at night, and before I left, she asked me for it.

So, I signed it.

Q She gave you the card after midnight, when you reported to work?

A Yes.

Q It was that same morning, but a little later in the morning when you signed the card?

A She gave to me the card, you know, when I came in.

Q Correct.

Around midnight.

Then, at eight o'clock, 8:00 A. M. in the morning, before you left, you gave her the card signed?

A Yes.

Q She asked you for it and you gave it to her?

A That's right.

Q And you dated it then?

A That's right.

Q Okay.

So, on the 27th, Miss Russell, at twelve o'clock A. M., right after you came to work, gave you the card and in the presence and part of the conversation with Hazell and Frazer, told you what you just said about Miss Harrington asking her to give you the card, right?

A Yes.

Q And she didn't say a word about, don't tell the other employees to you?

A I didn't hear nothing, not to my knowing.

Q You didn't hear her say to Hazell or Frazer that they're supposed to sign cards?

A No.

Q You didn't observe her giving cards to Hazell and Frazer?

A No, I didn't see nobody give no cards to nobody.

Q And after you got the card, did you remain in the staff room?

A I took it and brought it down to my locker.

Q Immediately, or did you go to your work station first?

A I can't remember what I did, you know.

Q Is it your usual custom, after this meeting in the staff room, upon coming to work, to go back to your locker before you go to your work station?

A Is it my usual habit?

Q Yes.

A No.

I usually go to my locker before I punch in.

Q But on this night, you didn't?

A I can't remember if I did.

Most times, I come in with my, you know, my uniform on.

Q Well, did you come in that night with your uniform on?

A I've been coming in with my uniform on.

Q Was that, I have been coming in with my uniform on?

A That's right.

Q So, am I correct, that night, you were wearing your uniform?

A Yes.

Q So, when you got the card, what would have occasioned you to go to your locker?

A To put the card.

Q Just for that purpose?

Just to put the card away?

A Yes.

Q That's the only reason you went to your locker?

A That's right.

Q And you put your card away.
Without signing it?
A That's right.
Q Didn't you put it in your pocket?
A I can't remember having it in my pocket.
But I know I put it in my locker.
Q At twelve midnight, or thereabouts?
A Somewhere around in the nighttime.
I don't know what --
Q You worked that night?
A Yes.
Q And then what happened when it was -- when it was time to quit?
A In the morning?
Q Yes.
A Miss Russell asked me back for the same card to which she gave me at night.
Q Where were you when this occurred?
A I was getting ready to leave?
Q Where, physically, were you?
A I can't remember where I was.
Q Were you wearing your uniform?
A I had been in my uniform, so I had to be wearing it.
Q What about your jacket or your coat, I assume

that in November you wear a coat or a jacket.

Is that correct?

A Yes.

Q Were you wearing your coat or your jacket at the time?

A I cannot remember.

Q Can you remember if anybody was present with you at that time?

A No, I can't remember.

Q You were all alone, is that your best recollection?

A As far as I can remember, I think I was alone.

Q Okay.

And what, then, did Miss Russell say to you?

A She asked me for the card she gave to me the night before.

Q Did she say anything else?

A She didn't say nothing at that time.

Q What did you say?

A I said, it's in my locker.

Q What did you then say after that, or what did she say after that?

A She told me to go get it now.

I went to get it and signed it for her.

Q I don't know that you understand the question.

You said, it's in my locker?

A Yes.

Q Did Mrs. Russell report to that in any way?

Did she respond?

A She --

I don't know.

She only asked for the card, and I went and got it and signed it and came back.

Q I understand that.

So, Miss Russell said to you, where is the card that I gave you the night before?

A Yes.

Q You said, it's in my locker, and to the best of your recollection, now, you can't remember her saying anything else?

A Not at that time.

Q You're sure?

I want you to think very hard now.

Is that your best recollection?

MR. COFFEY: Objection, Your Honor.

The witness has answered the question.

JUDGE COHN: Overruled.

Q Is that your best recollection?

A That's right.

Q And so, you left Mrs. Russell and you went to your

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locker?

A Yes.

Q And you filled out the card?

A That's right.

Q And you signed it and you gave it back to Mrs. Russell?

A That's right.

Q Did you have to go looking for her after you filled it out and signed it?

A She was on the first floor staff room.

Q Staff room.

So, you went back to the staff room and gave her the card, and what did you say, here it is, Mrs. Russell?

A I just gave her the card.

Q Did you say anything to her at all?

A The night before I said, --

Q Please, Mr. Williams, listen to the question.

When you came back from your lockerroom with the card completed, it was completed at that time, right?

A Yes.

Q You handed the card to Mrs. Russell.

Did you say anything at all to her?

A I did not.

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Q Did she say anything at all to you?
A No, I did not.
I just handed her the card.
Q Now, you're sure of that?
There was no conversation at that point?
A We had conversation at night.
Q I understand that.
We're talking about the following morning, at roughly eight o'clock.
A Yes.
Q Let me run through it again.
You were about to leave, or getting ready to leave. Mrs. Russell came to you and said, where is the card I gave you the night before.
A Yes.
Q You said, it's in my locker, nobody said anything else?
A That's right.
Q You went to your locker, you got the card, you filled it out, you came back to the staff room, you didn't say a word, she didn't say a word, you gave her the card, and you left?
Is that true?
A I asked her why she wanted the card so quickly.
Q When did you ask her that?

A That was the night before.

She said, Mrs. Harrington --

The same night, I mean.

Q This was at twelve o'clock?

A That's right.

Q Let's not get to the twelve o'clock.

I'm talking about the morning now, all right?

Let me run through it once more.

This was roughly eight o'clock in the morning, at the end of your shift, correct?

Miss Russell came to you and said, where is the card?

A Yes.

Q You said, it's in my locker.

Nothing else was said at that time, right?

A No.

Q That means that nothing else was said, or something else was said?

A Nothing else was said.

Q Nothing else was said.

You went to your locker, you got the card, you filled it out, you went back to the staff room, and gave the card to Mrs. Russell and neither of you said a word?

A I left to go home.

Q You left?

A To go home.

Q To go home?

A Yes.

Q Neither of you said a word to each other, and you left?

A I just said, here is the card and I left.

Q I just said, here is the card and I left?

A Yes.

Q So, obviously, at eight o'clock in the morning, Mrs. Harrington's name never came up?

A It was, the night before.

Q Would you agree, though, in the morning, Mrs. Harrington's name never came up?

A Yes.

Q Did you ever see Hazell or Frazer sign their cards?

A I did not.

Q Did you ever discuss with Hazell or Frazer about their signing, I show you General Counsd's --

I apologize.

I show you Party in Interest's 5-A and General Counsel's 6, which are the cards of Frazer and Hazell, respectively, and ask you if you ever discussed with either of them their signing those cards?

MR. COFFEY: Objection, Your Honor.

It's outside the scope of direct.

JUDGE COHN: Overruled.

A Ask me the question again.

MR. POLLACK: Could you read it back?

(Whereupon, the requested question was read back by the reporter.)

MR. COFFEY: Objection, Your Honor, as to relevance.

JUDGE COHN: Overruled.

A I didn't discuss it.

Q You didn't discuss it with them?

A No.

Q So, you don't know when they signed their cards?

A Right.

Q All right.

MR. POLLACK: I have nothing further, Your Honor.

JUDGE COHN: Mr. Kaufman.

Q (By Mr. Kaufman) Mr. Williams, I direct your attention to a conversation which you testified to during direct examination in the early part of January, concerning yourself, Mr. Hazell and Mrs. Frazer.

Do you recall that?

A Yes.

Q What was that conversation about?

A It was a conversation about the two Unions,

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531 and 144.

Q Isn't it a fact that during the course of that conversation, you were the one who said that 144 was the better Union?

A That's right.

Q So that, you're the one who told them about 144, is that correct?

A They knew about 144 besides I telling them.

Q Excuse me.

A They knew about 144 before I told them.

Q They knew about 144.

When the discussion started --

One moment, please.

Now, what did you tell them about 144?

A I said, 144 was a better Union than 531.

Q Did you say why?

A Because the benefits was better.

Q What happened, did they agree with you?

A Yes.

Q They did.

And, based on your statement and their agreement, it was decided that Miss Frazer would call the Labor Board?

A She said she was going to get some information.

Q That came after you said it was a better Union,

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144?

A Yes.

Q And, by the way, are you still employed at River Manor?

A I do.

Q You are.

And in what capacity are you employed?

A An orderly.

Q As an orderly?

A Yes.

Q You were never fired, were you?

A No.

Q Now, do you recall attending a meeting held by Local 531?

A Yes.

Q And do you recall asking any questions there?

A Asked a couple of questions, but I can't remember everything.

Q Do you recall asking a question concerning whether or not employees can be fired without a warning for being late?

A That's right.

Q And you asked that to Local 531 agent?

A Yes.

The guy who was here.

MR. KAUFMAN: He just said he can't recall the date.

JUDGE COHN: I asked him to try to fix the date as to when this meeting occurred.

This meeting may have happened last week, for all I know.

THE WITNESS: It was on a Monday, but I don't know what date it was.

MR. COFFEY: Objection, Your Honor.

If Counsel is going to proceed further in this line, I wish he'd adopt the witness as his own.

JUDGE COHN: I'm overruling you for the time being.

We'll see how far he goes.

MR. KAUFMAN: It's just a background question.

Q (By Mr. Kaufman) I show you Paragraph 8 and I ask you to read that and see whether or not that refreshes your recollection as to when the meeting was.

(Whereupon, the witness peruses the document.)

A Yes.

Q Does that refresh your recollection?

A Yes.

Q Can you now tell us when the meeting was?

A January 20th.

Q January 20th?

A Yes.

Q At that meeting, and I believe you testified that you asked Local 531 representative -- if it was necessary for someont to be fired for lateness without a warning slip.

Is that right?

A Yes.

Q Who were you referring to?

A Charles --

Q Not who you were talking to, but who were you talking about that got fired for lateness?

A I just asked him the question.

Q You weren't referring to anyone in particular?

A No, I wasn't referring to anyone.

Q So that, when you asked him this question, you didn't know about anybody who had been fired for being late?

A I didn't know.

Q No?

A No.

Q Is that your answer?

A That's right.

Q This was just a question that came up out of the blue in your mind?

A Asked him many other questions, too.

Q It was just a question that came up out of the blue, it was not in relation to anything, is that correct?

A No.

Q No, it's not correct, or no, it is correct.

MR. COFFEY: Can I have a standing objection to this line of questioning?

JUDGE COHN: You have an objection.

Q No, it is not correct, or no, it just came up in the blue?

A Asked if there's any reason for --

Q You asked the man whether or not it's necessary to give somebody a warning before firing them for lateness.

And I asked you whether or not that question was in regard to anyone in particular, and you said, no?

A Yes, it was.

Q It was?

A Yes.

Q Who was that in regard to?

A Somebody had got, you know, fired for lateness.

Q Do you know who had gotten fired for lateness?

A I can't recall.

It was somebody recently got fired for lateness.

Q Do you know why Miss Frazer was fired?

A I don't know.

I don't know.

Q Was she fired for lateness?

A I don't know.

Q So that, you knew somebody had been fired for lateness?

A Somebody had been fired for lateness.

Q And that's why you asked the question?

A That's right.

Q And directing your attention to the time you signed the card for Local 144, --

A Yes?

Q -- approximately when did you sign that card?

A For 144?

Q Yes.

Tell me what happened.

You came to work and what happened?

You reported to work that night, right?

A Yes.

Q You didn't sign it in the daytime at home or anything?

A No.

Q It was on the job, is that right?

A That's right.

Q Tell me what happened from the time you came to

work until the time you signed the card?

A I was given a card by Hazell.

Q Excuse me?

A I was given an authorized card from 144 by Hazell.

Q You came to work, did you punch in first, or were you give the card first?

I want to know the sequence of events, what happened on that day?

A I punched in first.

Q You punched in first?

A Yes.

Q Okay.

A I think I was working on the second floor.

I don't know.

One of the floors; I don't know.

Q Did you go to the meeting first?

You say, you always have a meeting in the morning.

That was your testimony on direct.

A What is that?

Q Isn't there a meeting you go to to find --

A I didn't say that.

JUDGE COHN: He didn't testify to that.

Q Is there a meeting when you come to work, to

find out what happened the night before?

A No.

Q There's no such meeting like that, in the nursing home?

A I come on the second floor.

Q Let me ask you a question.

I just want to be clear on this.

When employees come to work, you see, and they punch their timecard --

A Miss Russell assigns you --

Q Do you have to go to the staff room for a meeting, where you're briefed on what happened during the prior shift?

A No.

Q You don't do that?

A No.

Q You just have to find Miss Russell, is that right?

A She's in the, you know, --

Q She's around on the first floor?

A She's on the first floor, the staff room.

She tells you what happened, on the floor she's going to send you to.

Q This isn't a regular meeting where everyone is standing around, you just walk in and Miss Russell says, second floor, this is what happened, and then you go up

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to your floor?

A Yes.

Q That's the way it works?

A That's right.

Q There's no particular meeting of any kind?

A No.

Q I mean, nobody sits around at a conference table?

A No. No conference table.

Q And so, tell me what happened on that morning. You arrived at work, you punched your timecard. Did you go to see Miss Russell?

A Yes.

I go every night to see her.

She assigns you to the floor she wants.

Q Do you have a regular floor?

A I ain't got no regular floor.

Q You never had a regular floor?

A No.

Q Each night it differs?

A She sends you where she wants.

Q Did you work one floor more than any other floor?

A When there was two floors, I used to work on two.

Q I'm talking about in the period of time when the home first opened.

We're talking in December.

The home had only been open for a few months.

There were only two floors open.

Did you work on any particular floor?

A Second floor.

Q That was the floor you usually worked on, night in and night out?

A Yes.

Q Did you ever work on the first floor during that period?

A I worked on the first, but I can't remember if it was during the period or not.

Q Okay.

But, to the best of your knowledge, traditionally, you worked on the second floor?

A Yes.

Q Who else worked on the second floor?

A Hazell worked on the second floor.

Q Mr. Hazell worked on the second floor?

A Yes.

Q Anybody else?

A Brenda.

Q Brenda Frazer worked on the second floor.

And so, you came to work that day, you signed the time book, punched your timeclock, you went to Miss

Russell, she told you your floor, you went up to your floor.

Then what happened?

A I --

Q You'd started to do your work?

A That's right.

Q Okay.

How long were you working?

A I don't remember how long I was working.

When I signed that card from Hazell, I was on my break time.

Q You were on your break time.

What time is your break time?

A You know, I called her on the first floor and tell her whenever I want to go to break.

Q What time do you usually take a break?

A Ain't got no special time.

Q Do you recall what time --

Do you take a break within three minutes after you come to work?

A No.

Q Do you take a break within fifteen minutes after you come to work?

A No.

Q Do you take a break within a half hour?

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A No.
Q An hour?
A No.
Q So, how long would you say it usually is before you take a break, three hours, four hours?
A Less, you know, between mid shift.
Q So, your shift is from 12:00 to 8:00.
Is this your lunch break you're talking about?
A Yes.
Q Or your night, whatever you eat at that time, I'm sorry, but it's not a familiar hour for me.
Is that the time you would normally eat?
A Yes.
Coffee.
Q So, it's sometime in the middle.
So, it would be about 4:00 A. M?
A I don't know the exact time.
Sometime during the night.
Q Certainly it would have been after 2:00 A. M., isn't that right?
A I don't know, I said.
It's during the night.
Q What time normally do you take a break?
I think you side in the middle of your shift, is that right?

A I take a break whenever, you know, I ask Miss Russell for permission, whenever I need coffee.

JUDGE COHN: Let's get to it.

What difference does it make?

Q Do you recall --

MR. KAUFMAN: It makes a very big difference, Your Honor.

If the witness would step off the stand, I'd be glad to tell you.

JUDGE COHN: Go ahead.

Q (By Mr. Kaufman) Do you recall on that night what time you took a break?

A I cannot.

Q Do you recall if you took a very early break, or was it a regular type night where you take a regular break?

A I don't recall.

Q You told me, you came to work, you punched a timeclock, you saw Miss Russell.

She told you you were going to be back on the second floor where you always were, is that right?

A I usually be there.

Q You went up to the second floor.

What's the first thing you do when you get on duty?

A I check to see if everybody is in.

Q How long does that take?

A Fifteen, twenty minutes.

Q Then what did you do that night?

A I did many things.

I can't remember.

Q Okay.

Do you recall having a conversation with Mr. Hazell?

A Yes.

Q Now, that occurred, I assume, after the events you're telling me about now, is that right?

You said it occurred during the break?

A Yes.

Q Is that right?

A That's right.

Q So that, certainly you went upstairs, you checked the floor, did some other things, and now you had your break?

A Yes.

Q Do you and Mr. Hazell take a break at the same time?

A No.

Sometimes, you know, sometimes we take a break the same time.

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Q Okay.

And was anyone else there during that time?

A When, what --

Q We're talking about the time you signed a card for 144.

That's what we've been talking about.

You told me Mr. Hazell was there talking to you?

A Nobody was there.

Q Just you and Mr. Hazell.

Is that right?

A That's right.

Q And what did Mr. Hazell say to you?

A He gave to me the card.

I see it was a card from 144.

I signed it and gave it back to him.

Q That was the extent of the conversation?

A That's right.

Q And this was done on your break time?

A Yes.

Q Now, do you recall during the questions that Mr. Pollack asked you, and he showed you --

A Mr. who?

Q The attorney sitting over there, Mr. Pollack asked you some questions?

A Yes.

Q And he showed you a card that you signed --

He showed you a card you signed for Local 531, and it's dated 11-27-74.

Is that right?

A Yes.

Q And you explained to Mr. Pollack that, in fact, you had gotten this card on 11-26, when you reported to work, but you --

MR. COFFEY: Objection, Your Honor.

JUDGE COHN: Sustained.

MR. KAUFMAN: Strike that.

I'm sorry, Your Honor.

Q You explained to Mr. Pollack that you signed this card on the morning of 11-27-74, when you were leaving work?

A That's right.

Q And you had come to work the night before, is that right?

A Yes.

Q When you come to work, if you had come to work at 11:30 P. M., it was really 11-26, is that right?

If you come to work on November 26th, when you leave work, it's November 27th?

A Right.

Q You signed this card on the morning of the 27th?

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A Yes.

Q Right?

A Yes.

Q That's why you dated it like that, isn't that right?

A That's right.

Q Now, I show you Respondent's Exhibit 5 for identification, and, in particular, I show you the date, January 9th, 1975.

Is this the sign-in book that you signed?

A Let me see.

January 9th, no.

Q This is not the sign --

A I sign this way, on this side here.

Not on this side.

Q This is January 9th.

A I sign on January 8th.

Q Okay.

What about on this side, January 9th?

Is that your signature?

A Yes.

Q Okay.

So, you were in on January 9th, is that correct?

A Yes.

Q What time did you come in?

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A Twelve o'clock.

Q Okay.

JUDGE COHN: I didn't get that answer.

MR. KAUFMAN: "Twelve o'clock."

Q Now, what time did you come in on January 10th, if you can tell?

Let me ask you first, were you in on January 10th?

A That's right.

My name is right there.

Q What time did you come in, then?

A 11:42.

Q Okay.

And you testified that you start work at twelve o'clock, isn't that right?

A I started work at twelve o'clock.

Q Twelve?

A Yes.

Q I believe you testified that on the day you signed the card, you had punched in your timecard, clocked in, gone upstairs to work, and spent some time working and now it was a break time, isn't that right; so that, --

A Well, --

Q -- so that, I show you the card that you signed and --

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JUDGE COHN: G. C. 17.

Q I show you the card and I ask you what date is that dated?

A 1-10-75.

Q 1-10-75.

If you had signed the card on your break time, after you came in at 11:40 something, on January 9th, what would the date be?

MR. COFFEY: Objection, Your Honor.

JUDGE COHN: Sustained.

On January 9th he signed in at twelve o'clock.

Q If you had come to work at midnight on January 10th --

A Yes?

Q -- and after working a period of time, signed a card, what would the date have been?

A January 11th.

Q January 19th.

Well, let me go back.

MR. COFFEY: Objection, Your Honor.

JUDGE COHN: I'm going to sustain my own objection to this whole thing.

I think that you people are unnecessarily, and I mean this very seriously, taking advantage of these witnesses in terms of these dates, and the hours, and

to try to say he signed it on January 9th, rather than January 10th.

MR. KAUFMAN: No, sir, Your Honor.

JUDGE COHN: That question had January 9th in it.

MR. KAUFMAN: No, sir, Your Honor, that was not my intent.

If that was my intent, I certainly apologize to you.

JUDGE COHN: I wish we wouldn't --

MR. COFFEY: Your Honor, may I make a statement?

At no time during the entire investigation did General Counsel have for its examination the cards of Local 531 of the Teamsters.

MR. KAUFMAN: We're talking about Local 144.

JUDGE COHN: He's talking about signing a card for Local 144, now.

MR. COFFEY: All right.

Q (By Mr. Kaufman) Let me see if I could clear up this question for you.

The date on this card is 1-10-75, is that correct?

A That's right.

Q If you start work at midnight, at 12:01, on January 10th, is that correct, and during a break somebody asked you to sign a card, you would date it January 10th, isn't that correct?

A That's right.

Q That's right.

Now, directing your attention to Miss Russell.

A Yes.

Q Isn't it a fact that the work that is performed by the aides, there's a daily routine for?

A Most times.

Q And basically, once you start working, you know what that routine is, isn't that right?

A That's right.

Q And the only possibility of deviating, of changing the routine, is if something happens with a patient.

MR. COFFEY: Objection, Your Honor, to the form of the question.

JUDGE COHN: Overruled.

Q Is that a fact?

A No.

You could be, you know, could be shortness of employees.

MR. POLLACK: Could I have that answer?

JUDGE COHN: Could have been a shortness of employees, is that what he said?

Q Did you tell Mr. Coffey that the work that is done by the aides is done on a daily routine, and no

one has to tell us what to do?

A That's right.

Q You told that to Mr. Coffey.

Were you telling him the truth when you told him that?

A That's right.

Q So, that basically, the work that's being done --

A I said, most times she don't tell us what to do.

Q That's correct.

Only on rare instances, is that right?

A Yes.

Q How many times can you remember that she told you what to do?

A I can't remember.

Q You can't remember.

Do you remember any instances?

A No.

Q No.

Now, what about --

MR. COFFEY: You were blocking my way, I didn't see the witness --

MR. POLLACK: The witness indicated, no, Your Honor.

I wonder if we could have the record reflect that?

JUDGE COHN: You answered that as, no?

THE WITNESS: No.

JUDGE COHN: No, is the answer.

Q And isn't it also a fact that Miss Russell cannot give time off?

A I don't think she can.

Q You don't think she could?

A No.

Q She never gave you time off?

A She never gave me time off.

Q And isn't it a fact that Miss Russell cannot give vacations?

A She couldn't give.

She never gave.

She never had.

Q Isn't it also a fact that Miss Russell did not lay off?

A That's right.

Q And isn't it also a fact that you've never seen her change a shift?

A Change a shift?

Her?

Q You've never seen her change a shift?

A Never seen her change a shift.

JUDGE COHN: Now, do you want to clarify --

You never saw her change an employee's shift?

Q An employee's shift.

JUDGE COHN: Or her own?

Q An employee's shift.

A I never.

Q Who orders supplies, does Miss Russell order supplies?

A I think the day nurses do that.

Q The day nurse.

So, you never saw Miss Russell do that?

A Never saw.

Q Did you ever see Miss Russell attend a supervisory meeting?

A I never --

Q No?

You have to speak up.

A No.

Q And can Miss Russell, and this goes back to December and January, grant overtime?

A She never gave me overtime.

Q Now, you testified that Russell calls people in if sick, but the only time she ever called you in was May 20th, is that your recollection?

A She called me before that, but I can't remember.

She called me on May 20th.

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She called me sometime --

Q How much before that was it, a month, a week?

A I don't know how long.

It was sometime in the winter.

Q February is the winter.

Could it have been February?

A I don't know.

I said, --

Q Do you know if she called anybody else in while you were there?

A She called in other people.

Q She called in a lot of people?

A Other people.

I didn't say, a lot of people.

Q She called in all the people?

A Other people.

Q Other people.

Did you hear her call in other people?

A I seen other people come in that was off.

Q You saw her on the telephone calling other people?

A She told me that she called other people.

Q She told you she called in other people?

A Yes.

Because she called Frazer once, I think, once

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or twice.

I don't know.

Q She called Frazer?

A Yes.

Q Is that your testimony?

A I didn't -- I didn't testify that, but I know --

Q You're on the stand now, and I'm asking you questions and we expect you to give us answers that repr sent what you know.

Now, do you know if she called in Frazer?

A Yes.

Q You do know that for a fact?

A Yes.

Q How do you know that?

A Because Frazer was off and she came in, and she said, Miss Russell called me.

Q Miss Frazer said, Miss Russell called her in?

A On her night off.

Q Would you know whether or not Miss Russell called Miss Harrington to find out who to call in?

A I don't know, maybe she does.

Q Maybe she does, but you don't know?

A Yes.

Q Would it be a fair statement to say that you have never seen Miss Russell using the telephone to

call anyone in?

A No.

Q Is that a fair statement?

A Yes.

Q Yes?

A Yes.

Q And you testified that if you had a problem relating to your duties, you would go to Russell?

A That's right.

Q Now, is Miss Russell an L. P. N?

A I think she is.

Q And is she the nurst at night?

A Yes.

Q Did you ever have problems?

A Never had any problems.

Q You never had a problem?

Is that right?

A That's right.

Q So, you never went to Miss Russell?

A I go to her when I have problems.

Q But you just said, you never had a problem?

A Never had a problem.

Q So, you never went to Miss Russell with a problem?

A No.

Q So, when you testified you would go to Miss Russell with a problem, you were only speaking about if you had a problem?

A If I had a problem.

Q Right?

A Yes.

Q But you never had a problem?

A No, I never had a problem.

Q And you also testified, in an emergency, you would go to Miss Russell.

Did you go to Miss Russell in an emergency?

A Because one night I was working on the third floor, and there was an emergency, and I was calling her.

Q What was the emergency?

A There was a lady; I don't remember what happened.

Q Was it with a patient?

A Yes.

Q Do you recall when it was?

A I can't remember.

Q Was it after January, February?

Do you know when they opened the third floor?

A I can't remember when they opened the third floor.

Q But it was after the third floor was open?

A Yes.

Q It was an emergency involving a patient?

A On the third floor.

Q Was the patient sick?

A Yes.

Q So, you had to call Miss Russell because she's the nurse to give medicine or do something?

A She's the nurse you call to do anything.

Q You can't give medicine or administer treatment to the patient?

A No.

Q Not unless Miss Russell looks at it and sees what has to be done?

A That's right.

Q Is that the only emergency you can remember?

A That's right.

Q And now, one last question.

I direct your attention again to the book and, in particular, I call your attention to Friday.

MR. COFFEY: Friday, what?

Q 1-10, January 10th.

Now, when you come to work on Friday --

MR. COFFEY: Objection, Your Honor.

JUDGE COHN: I haven't heard his question yet.

Q Now, when you come to work on Friday, January 10th,

when you finish your work day, you're really working January 11th, which is Saturday, right?

A Yes.

MR. COFFEY: Objection, Your Honor.

You stopped this line of inquiry before.

JUDGE COHN: Yes, but so far, what he's saying is not what I was referring to.

Go ahead.

Q And --

MR. POLLACK: Did the reporter get the witness' answer, Your Honor?

JUDGE COHN: I don't know if he finished the question.

MR. POLLACK: He did and the witness answered.

JUDGE COHN: I didn't get an answer.

MR. POLLACK: May I ask if the reporter got it?

(Whereupon, the requested portion of the record was read back by the reporter.)

JUDGE COHN: Let's get it understood.

In other words, the witness is saying, yes, to the question that when he signed for January 10th, if he comes in, if he's coming in early, he would be still on the 9th?

MR. KAUFMAN: Just the reverse, when he signs in on the page for the 10th, it's for his work day of

the 11th.

Because he starts at 12:01.

JUDGE COHN: I thought I had that out.

That's not what you said before.

When I asked that very question.

MR. KAUFMAN: That's exactly how --

JUDGE COHN: What's today's date?

MR. KAUFMAN: Today is, I lose track when I'm on trial.

MR. POLLACK: The 18th.

JUDGE COHN: Today is the 18th.

A guy works, he's going to go tonight to work 12:00 to 8:00 A. M. He's really working, the hours that he's working are really on the 19th, right?

MR. KAUFMAN: Right.

JUDGE COHN: You count him as having worked for the 18th?

MR. KAUFMAN: His scheduled work day is listed as tonight for the 18th, but he signs in on the 18th, but works for the 19th.

JUDGE COHN: Wait a minute, that's what I said.

But that's not what you just said.

MR. POLLACK: You're both saying the same thing.

MR. KAUFMAN: When we post a schedule, you see, it says, dayssposed to work, Monday, Tuesday, Wednesday

talking about, according to the schedule --

JUDGE COHN: All right.

MR. KAUFMAN: The witness answered, if he signed a card, he would sign it for the 10th.

JUDGE COHN: Okay.

MR. KAUFMAN: Now, I'm showing the witness the book for the date, January 10th, and asking the witness on the 10th, that day did he report -- what time did he report to work?

THE WITNESS: 11:42.

Q 11:42 on the 10th.

If you started work at 12:01, that would be on the 11th, isn't that right?

A Yes.

Q January 11th.

And if Mr. Hazell had asked you to sign a card during your break, after twelve o'clock, as you have testified, you would have put down January 11th, isn't that correct?

A Yes.

MR. KAUFMAN: No further questions.

JUDGE COHN: Let me get this straight again, because I'm not as smart as the witness is.

That time book that you got there, the time book --

MR. KAUFMAN: May I show you the time book,

Your Honor, it would be easier to explain it if all Counsel approached the bench.

JUDGE COHN: The time book doesn't indicate the days on which the guy works?

MR. KAUFMAN: Yes.

You see, for instance, let's turn the page --

MR. POLLACK: Do you want this on the record, Your Honor?

JUDGE COHN: Off the record.

(Discussion off the record.)

JUDGE COHN: On the record.

Redirect.

REDIRECT EXAMINATION

Q (By Mr. Coffey) Now, Mr. Williams, I direct your attention again to General Counsel's 17.

You remember when Mr. Hazell gave you this card, you testified that you took it from Mr. Hazell, you signed it and gave it back to him.

At the time --

During the time you were with Mr. Hazell, when he gave you the card, and when you signed it and gave it back to him, did he say anything about Mrs. Frazer?

A I can't remember.

Q Do you remember anybody else being present at that time?

CSA Reporting

A No.

Q Did he say anything about --

JUDGE COHN: The answer is, no?

THE WITNESS: Yes.

JUDGE COHN: Nobody was present?

THE WITNESS: I can't remember.

JUDGE COHN: Oh.

Q (By Mr. Coffey) Do you recall whether Mrs. Frazer was discharged before or after you signed the card for Mr. Hazell?

A I don't know if she had left before or after.

Q Mr. Williams, --

You just don't recall.

When Mr. Hazell gave you the card, at that time, during that conversation, during that particular conversation, at that time --

Right?

A Yes.

Q -- did he say anything about the State Labor Board?

A He said he was going to get some information concerning unions.

Q He said, he was going to get some information concerning unions?

A Frazer said she was going to get some information

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concerning unions.

Q When Mr. Hazell gave you the card on 1-10, right, on January 10th, during that conversation, during the time that you were talking to him in the staff room, when he gave you the card --

MR. KAUFMAN: Objection.

There's been no testimony where that conversation took place.

MR. POLLACK: That's correct.

Q Where did the conversation take place?

MR. KAUFMAN: The problem with leading questions, Your Honor, is once asked --

JUDGE COHN: I understand that.

Q Where did you have the conversation?

A Second floor staff room.

Q Right.

Now, Mr. Williams, at that time, when Mr. Hazell gave you the card, did he say anything at that time about the State Labor Relations Board?

A I can't remember.

Q Okay.

Mr. Williams, you've testified that on one occasion, a patient became ill?

A Yes.

Q And you had to call Mrs. Russell.

What did she do when you called her?

A She called an ambulance.

Q She called an ambulance?

A Yes.

Q What kind of ambulance was it?

MR. POLLACK: Objection.

Relevancy; materiality.

A I don't know.

JUDGE COHN: What difference does it make?

MR. COFFEY: Can I answer that, Your Honor?

JUDGE COHN: Yes, answer it.

MR. COFFEY: If Mrs Russell calls an ambulance, she commits the funds of the home to -- for a purpose, which shows responsibility.

JUDGE COHN: All right.

She called an ambulance.

MR. COFFEY: Yes.

JUDGE COHN: She called an ambulance because of that emergency, right?

THE WITNESS: Yes.

Q Have you ever told me about this before today, Mr. Williams?

A I don't remember.

Q Mr. Williams, did you, in fact, --

I refer you to your Affidavit of January 20th --

MR. POLLACK: May I know the purpose for which this witness, General Counsel's witness, is being shown his Affidavit?

MR. COFFEY: He said he couldn't remember if he told it to me before.

MR. POLLACK: What difference does it make?

MR. COFFEY: Counsel for Respondent and Counsel for Party in Interest have made a great to do about the time of these things happening, and I'm just trying to fix this in time.

JUDGE COHN: What are you fixing?

You're talking about an emergency?

MR. COFFEY: Yes.

JUDGE COHN: You're doing this to show some kind of agency.

He's already testified --

I don't understand what you want to show him an Affidavit for.

He already testified he had an emergency, and he -- with a patient who was ill, that because of that he called Russell and Russell called an ambulance.

Q Do you remember when that occurred?

A It was during the nighttime.

Q Was it before or after you gave your statement to the Board?

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A It was before.

Before.

Q Is it not true that you gave your statement to the Board on the 20th of January, 1975?

MR. POLLACK: I object to the leading aspect of that question.

JUDGE COHN: I'll allow it.

Q You gave your statement to the Board on January 20th, 1975?

JUDGE COHN: In fact, he already identified it.

A January 20th?

I can't remember what time.

MR. COFFEY: Can I show him the statement?

MR. POLLACK: We'll stipulate the statement is January 20th.

JUDGE COHN: They'll stipulate you took a statement on January 20th.

MR. COFFEY: No further questions.

MR. KAUFMAN: Just about two questions.

JUDGE COHN: I'm going to keep you within the bounds this time.

Go ahead.

MR. KAUFMAN: Fine.

RECROSS EXAMINATION

Q (By Mr. Kaufman) Were you with Miss Russell

all the time after you reported the emergency to her?

A Part of the time -- Part of the time, I was with her.

Q Do you know if she called the doctor?

A I don't know.

Q You don't know.

Do you know if she called anybody at the home to ask them whether to transfer the patient out?

A I don't know.

Q Is it your understanding, when a patient is transferred to a hospital, does a doctor have to say go, transfer that patient out?

A I don't know.

Q You don't know.

You testified that, about your conversation with Mr. Hazell concerning the card during Counsel's redirect here.

Were you --

I take it, from the prior conversations that you had, that you were one of the group that actively wanted 144?

A Yes.

Q And when Mr. Hazell showed you the card, there was no hesitation in your signing it, isn't that right?

A That's right.

Q Could you speak a little louder?

A That's right.

Q That's right.

And was the time you signed this card, that was the first time that Mr. Hazell had shown you the card?

A For 144?

Q For 144.

A Yes.

Q Right?

A Yes.

MR. KAUFMAN: No further questions.

MR. POLLACK: Nothing, Your Honor.

JUDGE COHN: Anything further?

MR. COFFEY: No, nothing.

JUDGE COHN: All right.

We'll be in recess until 9:30 in the morning.

Off the record.

(Whereupon, the hearing was adjourned at 5:15 o'clock P. M.)

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Region 29

- x

In the Matter of:

SAMUEL LIEFER AND HARRY OSTREICHER, A COPARTNERSHIP,d/b/a RIVER MANOR HEALTH RELATED FACILITY

-and-

LOCAL 144, HOTEL,HOSPITAL, NURSING HOME AND ALLIED HEALTH SERVICES UNION, affiliated with SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO

Cases Nos. 29-CA-4167 29-CA-4182-2

-and-

LOCAL 531, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

Party in Interest

SAMUEL LIEFER AND HARRY OSTREICHER, A COPARTNERSHIP,d/b/a RIVER MANOR HEALTH RELATED FACILITY

-and-

LOCAL 1115, JOINT BOARD, NURSING HOME AND HOSPITAL EMPLOYEES DIVISION

Case No.29-CA-4215

-and-

LOCAL 531, INTERNATIONAL BROTHERHOOD OF TEAMSTERS,CHAUFFEURS,WAREHOUSEMEN AND HELPERS OF AMERICA

Party in Interest

LOCAL 531, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,WARESHOUSEMEN AND HELPERS OF AMERICA

-and-

LOCAL 1115, JOINT BOARD, NURSING HOME AND HOSPITAL EMPLOYEES DIVISION

Case No. 29-CB-2050

-and-

SAMUEL LIEFER AND HARRY OSTREICHER, A COPARTNERSHIP,d/b/a RIVER MANOR HEALTH RELATED FACILITY

Party in Interest

SAMUEL LIEFER AND HARRY OSTREICHER, :
A COPARTNERSHIP, d/b/a RIVER MANOR
HEALTH RELATED FACILITY
:
-and-
: Case No.29-CA-4307
LOCAL 1115, JOINT BOARD, NURSING HOME
AND HOSPITAL EMPLOYESS DIVISION :

- -x

16 Court Street
Brooklyn, New York
June 19, 1975

The above-entitled matter came on for hearing at 9:30 o'clock A.M.

BEFORE:

JULIUS COHN, Administrative Law Judge

APPEARANCES:

VINCENT COFFEY,ESQ.,
Counsel for the General Counsel, NLRB

VLADECK,VLADECK,ELIAS & LEWIS, ESQS.,
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BY: ROBERT CANTORE, ESQ.,of Counsel

JACKSON,LEWIS,SCHNITZLER & KRUPMAN, ESQS.,
Attorneys for Respondent River Manor,
861 Madison Avenue
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BY: ARTHUR KAUFMAN, ESQ., of Counsel

GUTTERMAN & POLLACK, ESQS.,
Attorneys for Party in Interest Local 531,
71 South Central Avenue
Valley Stream, New York
BY: SANFORD POLLACK, ESQ., of Counsel

I N D E X

WITNESSES	DIRECT	CROSS	REDIRECT
MARY LEE TERRELL	681	710-736	753
ALLRICH NORMIL	758	788-808	835

ooo

E X H I B I T S

PARTY IN INTEREST	FOR IDENT.	IN EVIDENCE
5B thru and including 5W		680
10A	722	
10B	724	
11	792	800
12	801	806
GENERAL COUNSEL'S		
18	761	764
19	774	807
RESPONDENT'S		
6A		773
6VV	864	
6WW	864	

P R O C E E D I N G S

JUDGE COHN: The hearing will be in order.

Mr. Coffee,do you have another witness?

MR. COFFEE: Your Honor, before we proceed to another witness we have several stipulations we'd like to enter into.

JUDGE COHN: All right.

Off the record.

(Discussion off the record.)

JUDGE COHN: On the record.

Proceed.

MR. COFFEE: In an off the record discussion, counsel for the Respondent, counsel for the Party in Interest, have agreed to stipulate with counsel for the General Counsel that after the recognition agreement was signed between the Party in Interest Home, negotiation toward a contract took place on various occasions.

MR. POLLACK: So stipulated.

MR. KAUFMAN: So stipulated.

JUDGE COHN: All right.

That stipulation is received.

MR. COFFEE: And in another off the record conversation, Your Honor, counsel for the Party in Interest, counsel for Respondent Home have agreed to stipulate that representatives of Local 531 were allowed on the premises of Respondent Home both before and after

the night of December, 1974.

MR. POLLACK: So stipulated.

MR. KAUFMAN: So stipulated.

MR. CANTORE: So stipulated.

JUDGE COHN: Let me get this straight now, representatives of Local 531 were allowed on the premises, is that what you said?

MR. COFFEE: Right.

Can we go off the record for a second.

JUDGE COHN: Off the record.

(Discussion off the record.)

JUDGE COHN: Back on the record.

The stipulation is that representatives of Local 531 were allowed on the premises both before and after what?

MR. POLLACK: Night of December, 1974, the date of the recognition agreement.

MR. COFFEE: Can we go off the record a second, Your Honor?

JUDGE COHN: Off the record.

(Discussion off the record.)

JUDGE COHN: Back on the record.

MR. POLLACK: In the same off the record discussion, Your Honor, it was stipulated and agreed that the remaining party -- cards which Party in Interest has already had

JUDGE COHN: Off the record.

(Discussion off the record.)

JUDGE COHN: Back on the record.

Before we go any further, I'd like the record to reflect that Mr. Greenspan on behalf of Local 1115 has not appeared to day and it's my recollection he left somewheres yesterday afternoon, and of course,we proceed without him.

Okay. Now, are we ready with a witness or anything else -- any stipulations?

MR. COFFEE: We are ready.

MR. COHN: Who are you calling?

MR. COFFEE: Counsel calls Mary Terrell to the stand.

Where upon,

MARY TERRELL

having been called as a witness, and having been first duly sworn by the Judge, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Coffee) State your name and address for the record, Mrs. Terrell.

A Mary Terrell, 894 Hancock, Brooklyn.

Q Approximately when were you hired by River Manor, Mrs. Terrell?

A Around the first of December 1974.

Q And what were you hired as?

A A nurses aide.

Q And who hired you?

A Mrs. Harrington, was was the director of nursing at that time.

Q What shift were you hired?

A Eight to four.

Q Did Mrs. Harrington say anything to you at that time about unions?

A Mrs.Harrington said at that time they don't have a union now, but they will be getting one soon.

And from there she told me that I had to take a lot of responsibilities on my own because they didn't have doctors and nurses.

Q That's all she said about --

A Yes.

Q I direct your attention to about a week after you were hired at River Manor, can you tell us what happened at that time?

A Well, about a week after I was hired there Miss Mitchell, a nurses aide, approached me --

Q Where were you?

A I was on the floor.

Q Which floor?

A Second floor.

Q River Manor?

A River Manor.

And she said to me, Miss Terrell, did you get a card, and I says no, what card.

She said a union card. I said for what union?

She said 531. And I says no, do you have one for me.

She says no, I only passed the cards out to the people that Miss Harrington told me to give them to.

Q Now, when is the first time you signed a card for any union?

A It was in mid December.

I was coming to work on my eight to four shift to River Manor --

Q This is 1974?

A This was in '74.

Q What happened at that time?

A And as I approached the building there was two gentlemen outside, Mr. McKinney from 144 and the other gentleman I don't know.

And they gave me -- he gave me a card with a leaflet attached to it.

Q That's Mr. McKinney gave you that?

A Yes.

Q Local 1441 membership card?

A Yes, it was.

Q And what happened then?

A He told me to sign the card and send it in..

I went into the locker room -- first I signed in, I punched my card, and I went down to the locker room to change my clothes, and as -- later the other aides came in.

And we started talking about the union, 144. They had cards also that was passed to them as they -- when they came in.

And we started to discussing the union and I said it was a good union.

Q Local 144?

A Local 144 was a good union.

Q What happened?

A And then Miss Pierre, a LPN came into the locker room and she overheard the conversation that we were having.

MR. KAUFMAN: Objection to the witness overhearing -- testifying about someone overhearing the conversation.

JUDGE COHN: Strike out overheard.

She came into the locker room.

Q (By Mr. Coffee) Go ahead, what happened then?

A She came into the locker room and she said yes, 144 is a good union.

She said if you need somebody to fight for you, that's the union.

And I said you are 100 percent right. Then she said to me later, she said, that she had heard that 531 was coming in, and that they had appointed Miss Mitchell representative for the nurses' aides and Miss Mercado representative for the LPN's.

And I said to her, who appointed them? I says we didn't vote on no union. We know nothing about a union.

She said she doesn't know.

Q Did she say who -- did she say who they were that appointed --

A Yes, she did.

She said --

Q Did she say it was Local 531?

A No.

MR. POLLACK: Was there an answer, Your Honor?

JUDGE COHN: Did you answer that -- this last question -- did you say no?

THE WITNESS: He asked me did she ask me did Local 531 appointed them, and I says no.

JUDGE COHN: What is the name of this LPN you are referring to?

THE WITNESS: Mrs. Pierre.

JUDGE COHN: How do you spell that?

THE WITNESS: I think it's P-e-i-e-r-a, something like that.

JUDGE COHN: Could you be -- could you be of any help to us on this, Mr. Kaufman?

MR. KAUFMAN: I think it's Pierre, P-i-e-r-r-e, I am not sure though.

Q (By Mr. Coffee) Who did she say appointed Mrs. Mitchess and Mrs. Mercado?

A She said use your head, Terrell, nobody but Miss Harrington and Mr. Ostreicher.

This is her exact words.

Q All right.

I direct your attention to the Monday after you signed the card for Local 144.

MR. KAUFMAN: Objection.

We have no date when this witness signed a card for 144 other than a Monday afterwards now.

Q Do you have a recollection --

JUDGE COHN: Sustained.

She just said she got a card and she had a discussion --

MR. COFFEE: Excuse me.

Q (By Mr. Coffee) What did you do with the card after you got it from Mr. McKinney?

A I signed the card, and I mailed the card.

Q On the same day you got it?

A On the same day.

Q And what's your best recollection as to the date?

A I don't remember the date it was that I signed the card.

Q Do you remember the month?

A It was in December, around the end, I guess, or the middle.

I don't remember exact date. But I know I did.

Q Okay.

And I direct your attention to the month after you signed thecard for Local 144, what happened on that date?

MR. KAUFMAN: Your Honor, again, I don't know how a witness can testify if she doesn't know when she signed a card about a month afterwards.

We have no time fix on the card.

JUDGE COHN: Well, whenever it was, it as the month after, that's -- all I could understand from that.

It was sometime in December.

MR. POLLACK: Your Honor, may we be off the record?

JUDGE COHN: Off the record.

(Discussion off the record.)

JUDGE COHN: Back on the record.

Proceed, please.

Q (By Mr. Coffee) All right.

JUDGE COHN: You are talking about the Monday after you signed the card something happened?

THE WITNESS: Yes.

JUDGE COHN: You signed a card sometime in December?

THE WITNESS: It was in December that I signed a card for 144, it was on a Saturday, Saturday morning, you know, like at Saturday.

JUDGE COHN: And you mailed it?

THE WITNESS: I mailed the card myself, yes.

JUDGE COHN: Now, two days later is a Monday, right?

THE WITNESS: Yes.

JUDGE COHN: Did something happen on that date?

THE WITNESS: Yes.

JUDGE COHN: All right.

Hold it.

Now, let him -- Mr. Coffee will ask you questions.

Q (By Mr. Coffee) What happened on that Monday?

A That Monday I was working on the first floor, River Manor, and it was after lunch time.

Miss Harrington called me. She said to me, Miss Terrell.

I said yes. She says, this was or the first floor,

it wasn't over the phone, she said I have a card for you to sign.

And I says Oh. She said I don't have the card with me, I will bring it back to you later.So she left.

I went on about my duties. She came back about 20 minutes later.

She gave -- she called me again. She said, Miss Terrell. And I said yes. We were standing in front of the staff room on the first floor.

She said take this -- I want you to sign this card.

I took the card from Miss Harrington and I looked at the card.

And I said do I have to? She said yes.

Q Okay.

What did you do with the card when you took it from Mrs. Harrington?

A I took the card.

Miss Harrington walked -- I said -- I said -- just before that -- she said give me the card tomorrow.

This is what she said. And I said to her, I am here today and you are here today, why should I give you the card tomorrow, I will give it back to you today.

She says, like hunched her shoulder and she walked away.

I took the card, I went into the first room next to the staff room which was empty, and I read the card.

Q And after you read the card, did you have any conversation with anybody?

A Yes, I did.

I read the card, and I called a Miss Robinson, a nurses aide.

Q Is this Mrs. Alma Robinson or another?

A Another Miss Robinson who works eight to four.

Q Do you know her first name?

A No. We were not on first name basis just last name.

Q Could it be Joyce Robinson?

A I don't know her first name.

All I know is Miss Robinson. I call her in. I said Robinson. She said yes, Terrell. She said come here.

She came where I was. I said look at this card. What card is it?

I said a 531 membership card.

She says, you are lucky, Terrell, she say when I signed like this, Miss Harrington was -- held her hand --

MR. POLLACK: Objection, Your Honor. This is hearsay.

We have gone --

JUDGE COHN: Sustained.

MR. POLLACK: I am going to make a motion addressed to the conversation.

I move to strike the conversation between Mitchess and this employee.

It was -- it included hearsay remarks attributable to Harrington.

JUDGE COHN: This is what she testified before?

MR.POLLACK: Yes, Your Honor.

JUDGE COHN: Rather than -- of course at this point you are asking to strike the whole conversation.

I am going to let it stand, and -- in the record, recognizing, as I do, that at least a portion of the -- of it was hearsay.

MR. POLLACK: Thank you, Your Honor.

Q (By Mr. Coffee) All right.

After you talked to -- with Mrs. Robinson, what happened at that time?

A I signed the card, my name, address, phone number and I took it to Miss Harrington's office.

Q Was Mrs. Harrington there?

A She was in her office.

I laid it on her desk. She didn't say anything to me.

And I walked out.

Q I direct your attention to the Wednesday following

the Monday that you signed that card, what happened at that time?

A We was -- there was a rumor --

MR. KAUFMAN: Now, I am completely confused because first the Monday we were referring to was in relation to the 144 card, now, we are talking about a 531 card and is he talking about it when after they -- she signed the 531 card or --

JUDGE COHN: Let's not muddy up too much.

MR. KAUFMAN: That's my confusion, Your Honor.

JUDGE COHN: There's no confusion so far for a change.

She signed a 144 card on a Saturday in December, whatever Saturday, we don't know.

The following Monday this matter of the 531 card transpired, is that right?

THE WITNESS: Yes.

JUDGE COHN: Now, he is referring to the Wednesday after the Monday, is that correct?

THE WITNESS: Yes.

JUDGE COHN: So we are operating at two day intervals.

MR. COFFEE: Right.

Q (By Mr. Coffee) So what happened on that Wednesday in December, 1974?

A Miss Mitchell and myself, nurses aides, was bringing the patients up from lunch.

Q Were there aides besides Mrs. Mitchell and yourself?

A There were other aides on there, but I don't recall their name at the time.

Q Where were you?

A On the elevator, bringing the patients up to the floors.

Q What happened at that time?

A Someone said, I don't remember, said to Mrs. Mitchell, Miss Mitchell, who appointed you representative for the nurses' aides?

She said, I don't know what you are talking about.

So the person said, what you mean you don't know what I am talking about?

She said I don't know. I says how -- I said to her, Miss Mitchell, how you are going to be representative for the nurses' aides when you don't know nothing.

She said that they had a meeting, 531 had a meeting before, and that she didn't get to the meeting because she was with the doctor,

JUDGE COHN: Who is this, Mitchell?

THE WITNESS: Miss Mitchell.

So she said that -- I said they had a meeting before. I said why wasn't we informed?

She said I don't know. Then she said -- Miss Mitchell said that there's a meeting today at two o'clock, and I said today at two o'clock, I say we wasn't informed there was a meeting today at two o'clock.

I says are you going?

She said, knowing Miss Harrington, she will have me with the doctor again today.

MR. KAUFMAN: Can I have -- could I have that last part read back?

(Record read.)

JUDGE COHN: That's Mitchell saying no --

THE WITNESS: Miss Mitchell said knowing Miss Harrington, she will have me with the doctor again today.

Q (By Mr. Coffee) I direct your attention to the 12th of January, 1975, what happened at that time, Mrs. Terrell?

A We were -- I came on duty at eight to four.

I was in the locker room. One of the night aides was there, I don't know her name.

She asked me had I signed a 144 card, and I told her yes, I signed one long before.

And I asked her why?

She said that ask -- ask me if I knew a Mr. Hazell, and I says no, who is Hazell?

She said the orderly on the night shift that wears

the beard, that has the beard.

And I says, oh, why did you ask?

She said that he gave some 144 cards to one of my aides -- one of the aides on my shift, and I asked her who.

And she said Spadaro. So by that time Miss Spadaro came into the locker room, and she said, Terrell, she said, I have some cards that was give to me by the night orderly, she said I don't know what to do with them.

I said give them to me.

She said -- because I don't want to get involved. So she gave me the cards.

And I asked the night aide if she had signed a card, a 144 card.

And she told me no. I asked her why?

She said she was afraid. I said what are you afraid of?

She said I am afraid of Mrs. Harrington. And I said what do you mean afraid of Mrs. Harrington.

She said I am afraid of losing my job.

I says well, if you sign -- if Miss Harrington want to fire you, she is going to fire you regardless.

If you sign a 144 card at least you have somebody to fight for you.

So by then the other aide on the eight to four shift was coming in, a lady, Miss Tutt --

MR. KAUFMAN: Is that another name?

THE WITNESS: Yes. Miss Tutt.

JUDGE COHN: Tutt?

THE WITNESS: Tutt.

JUDGE COHEN: Something like T-u-t?

A And I asked Miss Tutt had she signed a 144 card.

She said no. And I gave --asked her if she wanted one, she said yes.

I gave her a card. She signed the card and she gave it back to me being in there. Then the other aides came in, like Miss Bazemore, Miss Velez, Miss Pesa, Miss Robinson, Miss Pei, they all came into the locker room and I asked each and everyone if they want a card.

The took the cards and they --

MR. KAUFMAN: I hate to interrupt the testimony, but I'd like to get the names she said, Miss Bazemore, Robinson?

JUDGE COHN: Okay.

You want to repeat those names slowly?

THE WITNESS: Miss Bazemore, Robinson, Velez, Miss Pei, Miss Pesa, Miss Brown.

Q (By Mr. Coffee) How about Mrs. Ho-Shing?

A Miss Ho-Shing also.

Q Mrs. Vega?

A Yes. That's Velez.

Q That's Velez?

JUDGE COHN: You gave out all these cards?

This was around the same time?

THE WITNESS: This was the same morning that Mr. Hazell gave them to Mrs. Spadaro.

JUDGE COHN: You got them from --

THE WITNESS: I got them from Miss Spadaro, and I gave them to the aides.

They signed them, all except Miss Robinson and Miss Pesa, she did not sign, and give them back to me.

Q (By Mr. Coffee) Did the other ones give the cards back to you?

A Yes, she did.

Q What morning was this?

A This was on the 12th, on a Sunday morning.

JUDGE COHN: 12th of what?

THE WITNESS: January.

Then I gave the cards to Mr. Hazell.

Q (By Mr. Coffee) On the same day?

A On the same day.

Q What happened at that time?

JUDGE COHN: Wait a minute.

Who did you give the cards to?

THE WITNESS: I gave the cards to Mr. Hazell.

JUDGE COHN: Mr. Hazell, oh.

THE WITNESS: And when I gave the cards to Mr. Hazell, he said to me, you know, they fired Miss Frazer

a couple of nights ago, I believe for passing out the 144 cards.

MR. KAUFMAN: Objection, and move to strike.

JUDGE COHN: Overruled.

MR. COFFEE: We are offering it for what was said. We are offering it not for the truth of the matter alleged, just what was said.

JUDGE COHN: I will take it, not for the truth of what was said.

THE WITNESS: I said to Mr. Hazell -- no, he said that he believe that he will be next, he felt that Miss Harrington was going to fire him next.

This was his exact words.

Then I said we if they don't fire Frazer,and they are going to fire you, then I feel I will be next.

Q (By Mr. Coffee) Did you say why you felt that way?

A I said because I have not tried to keep anything, you know -- anybody from knowing that I was passing out 144 cards, and talking about the union.

Q What -- I direct your attention to the following day on 1-13-74 -- 75, what happened at that time?

A That was a Monday.

I was -- it was my day off. I got a phone call, and says that Miss Terrell in the morning --

Q Who phoned you?

A Miss Harrington.

Q Did she identify herself?

A She did not.

She did not identify herself as Miss Harrington when she call me.

Q Did you recognize her voice?

A I knew her voice, yes.

She said Miss Terrell. I said yes.

She said don't bother to come in any more. I says oh, she said I am not satisfied with your work.

I said thank you, and hung up the phone.

Q Prior to that phone call, had Mrs. Harrington or anyone else criticized your work for any reason?

A No, she did not.

MR. COFFEE: No further questions.

MR. POLLACK: May we have the affidavit?

MR. COFFEE: Oh, I do have some further questions, Your Honor, excuse me. I took an affidavit, yes, Your Honor.

I have some further questions based on that.

JUDGE COHN: That's part of your package.

Q (By Mr. Coffee) Mrs. Terrell, when were you reinstated at River Manor?

A April 16, 1975.

Q Can you tell us what happened --

JUDGE COHN: April 16th, is that?

MR .COFFEE: Yes.

JUDGE COHN: Okay.

Q (By Mr. Coffee) Can you tell us what happened on April 17, 1975?

MR. CANTORE: Objection.

MR. POLLACK: Objection.

MR. KAUFMAN: There is nothing in the complaint alleging an April 16th or 17th date.

JUDGE COHN: I will see where he is going.

Overruled. Somebody might be making statements or confessions.

Q (By Mr. Coffee) Go ahead.

A There were a meeting posted, a meeting -- a card posted that there would be a meeting at three o'clock in the staff dining room by Mr. Ostreicher.

Q He posted that card?

A I don't know who posted the card. It was on the board.

Q His name was on the card?

A Yes.

By the clock, time clock as you clock in. And --

Q Did you attend the meeting?

A Yes, I did.

Q And who was present at the meeting?

A All the aides and nurses that -- from all the shifts was there at the time.

Q Was it every single aide or aides from all the shifts?

A Aides and nurses from all shifts was there.

Q Now, I don't want you to go into the entire meeting, Mrs. Terrell, but I direct your attention to a comment by one of the LPN's during that meeting.

MR. POLLACK: May we have the identity of the LPN?

Q Mrs. Cash.

JUDGE COHN: What's the name?

THE WITNESS: Mrs. Cash.

Q (By Mr. Coffee) Will you tell us what Mrs. Cash said?

A Mrs. Cash approached Mr. Ostreicher and asked him about the lateness, about why did they take out money on her when she was only eight minute late.

And he asked her, who took out money on her?

She says, how do I know, the people that takes care of the checks.

Q And what did Mr. Ostreicher --

A And Mr. Ostreicher said that you are not late if you punch in a quarter pass the hour that you are due in.

I will then -- well, if I find -- if I don't permit you, that will be the end of it I presume.

But if I do permit you to amend, then counsel, I presume will make some motions and I will rule at that time.

But I will permit you, if you wish, to make a motion with regard to Pierre or anybody else as supervisor.

MR. COFFEE: Or an agent?

JUDGE COHN: Or an agent, yes.

MR. COFFEE: All right, Your Honor.

We move to amend the complaint to include Mrs. Pierre as a supervisor -- and/or an agent.

MR. KAUFMAN: Your Honor, pursuant to the Jencks Rule, statements have been turned over to me, and I observe in reading the statement of Miss Terrell dated the third day of March -- well, that's the second statement -- this frist statement is dated the 21st day of January, 1975, the third paragraph talks about Miss Pierre in her conversations.

Now, certainly counsel had knowledge then that Miss Pierre was one of the LPN's and should have alleged in the complaint, and the bill of particulars was served, he stated he had no knowledge of any one else, and now at this time he moves to amend his complaint to include this person.

I think that's highly improper.

particulars as to those people who we allege committeed unfair labor practices, who were supervisors and/or agents.

We did not list every agent and supervisor in the Home. We are making no assertion in the complaint that Mrs. Pierre has done anything to violate the Act.

JUDGE COHN: All right.

Look, I am going to cut this short, Mr. Pollack. I know what your argument is about bills of particulars, and the possibility of surprise and all that.

I am going to allow it. From what I have stated before, I think we have gathered that I may not have allowed it if we were say going to finish this hearing at four o'clock this afternoon, but in view of the fact that you are going to have time to prepare, the preparation is such that between you and Mr. Kaufman, with your expertise, I would say that you probably would need about ten minutes to prepare for that allegation, so I don't think that you are -- you know -- you are going to be prejudiced.

MR. POLLACK: Yes.

But Mr. Coffee said something else, and I want to make sure I understood what he said.

I believe he said that General Counsel does not contend that Mrs. Pierre did anything which would be an unfair labor practice or would violate the Act.

Is that what you said, Mr. Coffee?

MR. COFFEE: Right.

CROSS EXAMINATION

Q (By Mr. Pollack) Miss Terrell, am I correct in recalling your testimony at that time it -- at that time it was about a week after you started to work that you had a conversation with aide Mitchell?

A Yes.

Q You are certain about the fact it was about a week?

A Yes. I say a week after -- within --

Q What about your conversation with Harrington about signing the card in relation to that conversation with aide Mitchell, was that about a week after that?

A With Miss Harrington?

Q Yes.

A Sure it was.

It was after I sign the card for 144 that I had the conversation with Miss Harrington.

Q I understand that.

We will get to that in a moment.

What -- I am now trying to place Miss Harrington's conversation with you in relation to your conversation with aide Mitchell?

A Miss Mitchell's conversation was right after I started working there, at least a week, you know.

Q About a week?

A Within a week or more when I started working there.

Q Within a week or more?

A Yes, I'd say within a week or more.

Q On direct examination you said a week.

Now, you are saying within a week or more.

Can you try to pin that down for me slightly?

A Well, within a week.

Q Within a week?

A Yes.

Q Can you fix the day of the week on which it occurred?

A No, I cannot.

Q Okay.

Now, in relation to your conversation with Miss Mitchelll can you tell me how long after that you had the conversation with Miss Harrington?

A It was in the middle of December that I had the conversation with Miss Harrington.

Q I understand that also.

Could you -- well, let me do this.

I show you a handwritten document and ask you if you recognize the signature?

(Handing document to witness.)

A Yes, I do.

Q Is this an affidavit to the National Labor Relations Board?

A Yes, it is.

Q Okay.

So let's summarize the chronology again.

You started to work, within a week after you started to work you spoke with Mitchell?

A Yes.

Q A week after that you spoke with Harrington, is that correct?

A That's what I said there.

Q But is that correct?

If it's not correct, you can tell us?

It's perfectly proper.

A After I spoke with 144 that I spoke to Miss Harrington.

And I definitely spoke to 144. I am sure in the middle of December.

Q On a Saturday?

A I t was on a Saturday. And this was a Monday.

Q And this was a Monday.

Now, getting back to the chronology, a week after you started to work you spoke with Mitchell?

A I did.

Q A week after that you spoke with Harrington?

A Yes.

Q Now, could you tell me when your first day of work was?

A On the 4th.

Q On December 4th?

A Yes.

Q You spoke with Miss Mitchell somewhere around December 11th?

A I don't know the date.

Q Well, it was about a week after the 4th?

A I said about a week after I started working. I don't know the date.

Q And you spoke with Miss Harrington about two weeks after you started working, is that correct?

A Well, if it was after mid December, it was in mid December, then it would have to be.

Q So it's correct that you spoke with Harrington -- Miss Harrington two weeks after you started to work, is that correct?

Do we have an answer, Mr. Reporter?

A No, you don't have an answer.

I said that I spoke with Miss Harrington after I spoke to 144. That was in mid December.

Q Okay.

A That's it.

Q You spoke with 144 on a Saturday?

A I did.

Q You spoke with Miss Harrington on a Monday?

A I did.

Q And that following -- that very next Wednesday you had this meeting with -- which you described about the 144 cards, is that the correct chronology?

A I beg your pardon, would you repeat that again?

Q You soke with 144 on a Saturday?

A Yes.

Q That very next Monday --

A I received a card.

Q That was on your way to work?

A I was going inside the building, yes.

Q To work?

A Yes.

Q And that very next Monday you spoke with Miss Harrington about signing a card for Local 531?

A I did.

Q And that very next Wednesday you had the meeting in the locker room with several nurses, is that correct?

MR. COFFEE: No.

A No, it's not correct.

Q My notes maybe in error.

I apologize, it was not the meeting in the locker room, it was in discussion in the elevator where you talked to Miss Mitchell about the union meeting?

A Yes, I did.

Q Okay.

Let's see if we have that chronology straight since I may have confused you.

On a Saturday on your way to work you picked up a card for Local 144?

A I did.

Q The next Monday at work Miss Harrington talks with you about signing a card for 531?

A Yes.

Q And is the very next when you have a discussion with Miss Mitchell?

A Miss Mitchell.

Q In the elevator at work?

A Yes, it was.

Q I show you the day book, which has already been marked for identification as Respondent's Exhibit 5, and ask you to look at it for the month of December and tell me when the first Saturday, Monday, Wednesday combination of your work was?

Do you understand the question?

You have testified to a sequence of days working, Saturday, Monday, Wednesday, in December.

See if by signing -- by looking at that day book you can fix a -- the time, and possibly I can help you if you have any trouble.

(Handing document to witness.)

A What do you want to know?

Q I want to know when it was that you worked -- the first time in December on a Saturday, the following Monday and the following Wednesday?

MR. COFFEE: Off the record for a second, Your Honor.

JUDGE COHN: Off the record.

(Discussion off the record.)

JUDGE COHN: Back on the record.

Q (By Mr. Pollack) Let's start with Saturdays, if you like.

A This is in December here, right?

Q Yes.

A I worked here on a Monday.

Q Could you see if you worked the preceding Saturday?

A I worked the Sunday.

Q Would you tell me --

A I worked a Saturday also.

Q May we have the day?

A It says 12-14.

Q All right.

A 12-15. 12-16.

JUDGE COHN: Hold it.

You worked Saturday, 12-14?

THE WITNESS: Yes.

JUDGE COHN: Give us the day of the week also,

all right?

THE WITNESS: A Saturday, 12-14.

MR. POLLACK: 12-14.

JUDGE COHN: Skip Sunday.

Q (By Mr. Pollack) Monday, 12-16, you worked?

A Yes, my name is here.

Q And Wednesday --

A 12-18 --

Q -- 12-18, you worked?

A Yes.

Q Would you look at the preceding Saturday, which would be 12-7, and tell me if you worked on 12-7?

A My name isn't here.

Q So you did not work on 12-7, isn't that correct?

A I did not.

Q So therefore your conversation with Miss Harrington took place on 12-16, is that not correct?

A I don't know the day it took place.

Q That doesn't help you at all to refresh your recollection?

A It does not give me no date of when it took place. I know I talked to Miss Harrington after I talked to 144 in December.

Q On a Saturday, and Miss Harrington on a Monday?

A It was on a Monday, that I know the date -- not the date of the month, but the day I know.

Q That's fine.

Now, how many cards did you sig for Local 144, cards or slips --

A I don't know how many I signed because as I talked to the girls about 144, to give them encouragement, I just sign a card.

Don't ask me how many because I can't tell you.

Q Okay.

Talking about the card that you signed on the Saturday of -- before your conversation with Miss Harrington --

Q Yes.

Q -- will you tell me what color that card was?

A It was a blue card with dark writing.

Q And that was a card that you filled -- that you mailed?

A I did.

Q Okay.

All right.

Now, let's go to the meeting in the locker room when you were handed -- were handing out cards for Local 144.

I believe you testified that that was January 12th, isn't that correct?

A I did.

Q What color were the cards that you handed out that day?

A I don't -- I think they were all colors there, blue and white.

Q All colors?

A I am not sure.

Q I show you --

A I can't be positive.

Q I show you General Counsel's 17, and I ask you if this isn't the kind of card that you handed out that day?

(Handing document to witness.)

That's January 12th in the locker room.

A I don't remember.

I handed -- I don't know if theywere all white or all blue or blue and white. I am telling you. I don't remember.

Q But you know who signed the card that day, don't you?

A Yes.

I know who signed cards that I gave, yes.

Q And that was January 12th?

A Yes. That I gave the girls the cards.

Q And what did you do with the cards -- did the girls sign them and return them to you, or at least some of them?

A Yes, they did, some of them.

Q And what did you do with those cards?

A I gave them to Mr. Hazell.

Q You know what Mr. Hazell did with them?

A No, I do not, because he left.

Q Did you sign a card that day also in the locker room?

A Yes. It was in the morning time.

Q Did Lily Pierre sign a card that day in the locker room?

A I don't know Lily. Miss Pierre at the nurse?

Q Pierre, P-i-r, a nurses aide --

JUDGE COHN: That's a P-e-r --

A There's a Pei and there's a Pierre.

Q You know Miss Lily Pierre or do you know a nurse Pierre?

A I know the aide.

Q Okay.

I show you a card which has not yet been marked, but ask you if that's one of the cards which was signed in the locker room that day?

(Handing document to witness.)

A It's got the 12th on it.

Q Is that the card?

A I dont know. I guess so. I told you I don't

know the colors.

I assume this was the color, and I assume it was blue.

I really don't know. As I got the cards, I didn't look to see what color the cards was. I just passed them out.

Q It's your best recollection that's the card you had Miss Pierre sign?

A Probably is. I don't know.

Q Okay.

A I don't know.

MR. POLLACK: Would the Reporter be kind enough to mark that as Party in Interest --

A I don't know. I guess it is.

JUDGE COHN: 10.

MR. POLLACK: -- Party in Interest 10A, please.

(Whereupon, the above described document was marked as Party in Interest Exhibit 10A for identification.)

Q (By Mr. Pollack) I now show you another card bearing the purported signature of a Maggie Bazemore, and I ask you if htat was one of the cards that was signed at that meeting on the 12th?

(Handing document to witness.)

A I don't know.

I still say I don't know the color or -- of the cards.

Q You don't know?
A I don't know the colors. I only passed them out.
Q Did anybody at that meeting tell you that they had --
A It wasn't a meeting.
Q -- at that discussion, at that gathering, tell you that they had recently signed a card already?
A Yes, they had.
Q Who told you that?
A Miss Bazemore.
Q Who else?
A Miss Ho-Shing.
Q Who else?
A That's --
Q How about Miss Tutt?
A No.
Q She didn't tell you she had signed a card before?
A She told me she hadn't signed a card.
Q She told you she hadn't signed a card.
Did you give her a card to sign?
A I gave Miss Tutt a card to sign, yes, I did.
Q And did she sign it?
A She signed the card, and she gave it back to me.
Q And she never said a word to you --in fact she told you she hadn't signed a card before?

A For 144, that's what she told me.

MR. POLLACK: Would the Reporter be kind enough to mark this as Party in Interest 10B?

A I don't know whether she had or not. That's what she said.

(Whereupon, the above described document was marked as Party in Interest Exhibit 10B for identification.)

JUDGE COHN: Off the record.

(Discussion off the record.)

JUDGE COHN: Back on the record.

Q (By Mr. Pollack) I show you a Party in Interest 10B, which is a card of Joyce A Tutt, and ask you if -- to look at the card.

And then I ask you, what's the date that appears on that card?

(Handing document to witness.)

A 1-10-75.

Q Is that the card Miss Tutt gave you?

A I don't know.

Q But she told you at that time that she hadn't signed an earlier card for Local 144?

A She did.

Q Talking about yourself now, you signed a card on Saturday, a blue card I believe you testified?

A Yes.

Q And as I recall, you told us that you mailed that card in?

A I did.

Q Now, the day that Miss Harrington -- strike that.

Between the time of your signing that blue card, which was on a Saturday, and this meeting, sometime later, in January, how many, if you can recall, cards did you sign for 144?

A I don't remember.

Q Well, do you remember signing any more blue cards?

A I remember signing it, oh, I don't know. I remember signing another blue card, yes.

Q You do.

Is this the blue card which you signed besides the one that you testified about signing in December?

(Handing to witness.)

A I guess so.

Q And that --

A My name.

Q That card is dated January 8, 1975, correct?

A Correct.

Q And this meeting took place on January 12, 1975, according to your testimony, correct?

A Right.

Q Between January 8th and January 12th how many cards, if any, did you sign for 144?

A Between this time and the 12th, right?

Q Right.

A Two, I think.

Q Two?

A I am not sure, two.

Q What about the colors of those?

A I don't remember the color. Probably blue or white. I don't know.

Q Well --

A It could have been blue, it could have been white.

Q All right.

In addition to signing blue cards, did you sign any white slips, the longer slips similar to this slip, which is General Counsel's 8?

(Handing.)

A I don't remember.

Q You don't remember?

A I told you I don't remember the colors.

Q Well, let's see if this card will help refresh your recollection.

I show you a card dated January 10, 1975, and I ask you if that's your signature which appears on the bottom of that card?

a meeting, your memory is much more accurate about the date that that meeting took place than it is on the day that you fill out and write a date on it, is that your testimony?

A Because I forget the date that I write it on.

But if you talk to me today, I am not going to forget you talked to me today, which is a Wednesday.

I mean I know the date but I don't forget the day.

(Laughter.)

Q So the meeting of the 12th then was what day of the week?

A It was on a Sunday.

Q Did anybody else at that meeting on that Sunday on the -- what may or may not have been the 12th -- indicate to you that they had immediately earlier signed a slip for 144 for -- or a card for 144?

A They didn't say immediately sign, no.

Q Did anybody --

A They said that they had signed a card.

Q Ho-Shing said that?

A Ho-Shing said she had signed one before.

They didn't give me the dates they had signed these cards.

They only said they had signed the cards.

Q And they signed another one for you?

A I asked them to sign another one.

Q And they did?

A They took the card from me and I got the card back. I did not read the card.

Q You got the card back after the -- after it was signed?

A I did.

Q And that was amongst the cards that you turned over to --

A Mr. Hazell.

Q Mr. Hazell, correct?

A And the date, I don't know what date they put on the cards or nothing.

All I know I did not read each and every card.

Q What about Velez, did she sign that -- sign a card that day?

A Miss Velez, I think she did.

Q And --

A I don't -- I think so. I really don't remember.

Q Didn't you testify that she did on direct examination?

A I might have.

Q Well, did she or did she not sign a card at that meeting on the 12th?

A Yes, I guess she did.

Q And gave it back to you, and that was amongst the cards that you gave to Mr. Hazell?

A Yes. I gave them all back to him.

Q And she didn't say anything about signing a card or--

A She didn't tell me she had signed. She just took the card from me.

I don't know.

MR. POLLACK: May we be off the record, Your Honor?

JUDGE COHN: Yes.

Off the record.

(Discussion off the record.)

JUDGE COHN: Back on the record.

MR. POLLACK: Your Honor, at an earlier recess or off the record conversation I called upon counsel for the General Counsel and counsel for Local 144, one of the charging parties in this case. to produce any and all check off or union membership application or authorization cards for the employees of River Manor dated between August 1974 and this date.

They have produced some.

In our present off the record conversation, and if I am reporting this incorrectly, somebody please correct me, they indicate to me that there maybe others.

I call for the production of all the cards that fall within the category that I have just described.

JUDGE COHN: All right.

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you and I agree on that.

MR. POLLACK: Thank you.

JUDGE COHN: Okay.

Now, you had some cross examination, Mr. Kaufman?

CROSS EXAMINATION

Q (By Mr. Kaufman) Miss Terrell, you testified about a conversation that you had with a LPN what was the name of that LPN?

A Mrs. Pierre.

Q Mrs. Pierre.

And that conversation concerned Miss Mitchell being the delegate, is that right?

A Yes.

Q And isn't it a fact that Miss Pierre said to you -- well, strike that.

Would you tell me what Miss Pierre said to you, just concerning Mitchell, as the delegate?

A She said that she heard that Miss Mitchell was representative for the nurses' aides, Local 531.

Q And what else?

Is that the whole conversation?

A You said just tell you about Miss Mitchell.

Q What else happened concerning Miss Mitchell?

Anything else?

There was nothing said -- nothing else said at that time?

A About Miss Mitchell?

Q Yes.

A I said who appointed her.

Q Yes.

A For representative for us?

Q Yes. Is that the whole conversation then?

A That's not the whole conversation.

Q I am asking you to tell us the whole conversation.

A And she said use your head, Terrell, who else but Miss Harrington and Mr. Ostreicher.

That was her exact words.

Q And she said use your head, Terrell, who else but Mrs. Harrington and Mr. Ostreicher?

A That's what she said.

Q Now, did she say it exactly like that, or may she have used different words?

A That's her exact words.

Q Those are her exact words as you recall it today?

A That's right. As I recall her saying.

Q Let me show you your affidavit, page two.

A Yes.

Q And direct your attention to the first paragraph, and I ask you to read what Miss Pierre said into the record, read that, please.

(Handing document to witness.)

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Read it. She said -- can you read that?

Would you like me to read it into the record?

A I can read that. She said --

Q I'd like you to read it to the Reporter.

A Okay.

She said Terrell --

MR. COFFEE: Objection, Your Honor.

JUDGE COHN: Overruled.

Q Would you read that --

JUDGE COHN: Please read that, Miss Terrell, again.

A She said, Terrell, use your head, it couldn't be anyone but Miss Harrington and Mr. Ostreicher.

Q So she didn't say to that it was Harrington and Ostreicher who appointed her, she was guessing the same as you were guessing, isn't that right?

A She said --

Q She said it couldn't be anyone else.

A She said it couldn't be.

JUDGE COHN: I am going to cut you at this point.

MR. KAUFMAN: I am going to move on, Your Honor.

JUDGE COHN: Her oral testimony speaks for itself as well as the affidavit.

I think you are picking at pins or -- at pins now or something

Q (By Mr. Kaufman) Now, directing your attention

to January 12, 1974 -- let me ask you this, prior to January 12th, you told us that on a Monday you had received a card from 144, and you signed it?

A I did not.

Q Prior --oh, on a Saturday, I am sorry. Is that right?

A Yes.

Q And you signed it and sent it in by mail, is that correct?

A I did.

Q And you told us that the next time with 144 -- where 144 was involved was on January 12th, is that right?

A Yes.

Q And what happened at that time?

A I was in the locker room with a night aide, I don't know her name, and she asked me if I had signed a 144 card.

And I told her, yes, I had signed one before. I asked her why?

She said that Mr. Hazell had given out 144 cards to an aide on my shift.

Q I see.

Did you -- didn't you say on direct that you said whose Mr. Hazell?

A I did. Because I did not know Mr. Hazell.

Q Oh, I see.

And did she introduce you to Mr. Hazell at that time?

A She did not. We were inside the locker room.

Q You were inside the locker room?

A Inside the ladies' locker room.

Q Okay.

And at what time after the card was signed did you give the cards to Mr. Hazell?

A I don't -- it was before eight o'clock.

Q It was before eight o'clock. And where was Mr. Hazell?

A Mr. Hazell was downstairs in the -- across from the staff dining room there in the hallway.

Q And you walked out and just gave it to Mr. Hazell?

A I walked out, and he was walking up, you know, to me at the time.

Q And you said here's the card, Mr. Hazell?

I'd like to know how it happened?

I mean you tell us, I can't tell you.

A We, you didn't ask me.

Q Tell me how it came about and how it happened?

A Well, I have a name pin on my uniform that I wear.

MR. Hazell had his name pin on. And by the

description that the night aide had gave me, this is how I knew who Mr. Hazell was.

Q I see.

A So I approached Mr. Hazell.

Q How far away was it when you saw Mr. Hazell with his pin on?

A I was up to him. I was walking up to him.

Q I was confused.

Because you said you were approaching him.

A Well, I was walking up to him. He was coming towards me.

I was leaving the ladies' locker room. And he was coming to the locker room, towards the locker room, right, which is only a short distance.

Q I see.

So you saw Mr. Hazell, and then what happened?

A The I said to him, Mr. Hazell, and he said yes. And I says, I am Miss Terrell. And I did like this (indicating.)

Q Right.

A And he said yes. I said I have some cards here for you that you gave to Miss Spadaro.

Q And is it your testimony that Miss Spadaro gave you the cards?

A Spadaro gave me the cards, yes.

She had some 144 cards, Spadaro had given her.

Q Now she had some 144 cards Spadaro had given her, who is the she, was this the night aide you testified you were talking to, according to your statement?

A That's what Mr. Coffee got it there, but I didn't tell him that way.

Q So that according to the way Mr. Coffee wrote it down the night aide had the cards and not Spadaro, is that correct?

A It suppose to have been Spadaro had the cards.

Q I understand what you are saying to me, but I want to be clear; the way Mr. Coffee wrote it down, not the way you are testifying now, but the way Mr. Coffee wrote it down, the night aide had the cards and not Spadaro, is that correct?

A That's what it says there.

Q And is it your testimony that's not what you told Mr. Coffee?

A My testimony is that Miss Spadaro gave me the cards, and that's my testimony, and that's what happened.

Q Fine.

Now, during -- now, going back to -- back a little to your conversation with Miss Pierre, the LPN.

A Yes.

Q And I believe you had two conversations with her,

one involving Miss Mitchell, is that correct?

That you have already told us about.

And did you also have a conversation with her concerning 144?

A I did.

Q And she told you that she thought 144 was a good union?

A Yes.

Q Do you know if she signed a card for 144?

A I don't know.

She had one. Whether she signed it, I don't know.

Q But she told you it was a good union?

A She did.

Q Did you know Miss Pierre?

A Only by working.

Q Did you consider her a friend?

A No. I don't have friends at River Manor.

Q You have no friends at River Manor?

A I do not.

Q And she didn't say anything negative about 144?

She didn't say -- strike that.

She didn't say don't sign that card, did she?

A She did not.

Q She told you it was a good union?

A She said it was a good union, that's what she said.

Q Now, during the period, the middle of December when you signed the 144 card, and January 12th, there was nothing else concerning 144 at the nursing home that you were involved in, isn't that correct?

A No, that's not correct.

Q That's not correct?

A Since the time --

Q Well --

A -- you said --

Q Excuse me, you have answered my question.

That's fine.

A Would you repeat that again, please?

Q Between the period of mid December, 1974, and January 12, 1974 --

JUDGE COHN: Five.

Q -- '75, there was no activity for 144 at the nursing home that you were engaged in, you, meaning you, Miss Terrell, is that correct?

A No.

Q No.

A I would say not because --

Q Let me show you your affidavit, and I ask you to read your affidavit, and after reading your affidavit,

Q (By Mr. Kaufman) In an event, Miss Terrell, isn't it a fact that to your -- you have no knowledge that anyone from management or supervision knew anything about your activities concerning 144?

JUDGE COHN: Hold it a minute.

What's the first part of that question?

(Record read.)

JUDGE COHN: All right. Go ahead.

You understand the question, Miss Terrell?

THE WITNESS: No, I did not.

JUDGE COHN: You want to break it up. It's a confusing question.

Q Miss Terrell, to your knowledge, did anyone from management know that you were talking for 144?

A I don't know. Not to my knowledge.

Q Not to your knowledge.

And at the time of your discharge, I believe you testified that there was nothing said to you by Miss Harrington that would indicate to you that she was aware of any union activity?

A No.

Q No, that's not a fact or no, I am right in what I just said?

A No. You are right.

Q Did there ever come a time during the period of your employment when you told a LPN that you were

not going to tell them where you were?

A I beg your pardon?

Q Did there ever come a time during the course of your employment when you told a LPN that you did not have to listen to what she said to you?

A No, it was not.

Q That never happened?

A Never.

Q At the time when you were hired, were you told that there would be a probationary period?

A I was not told at the time I was hired that there would be a probationary period.

Q And during -- you also testified aboout a meeting that was held in April of 1975?

A Yes.

Q And a statement made by Mr. Ostreicher?

A Yes.

Q Are you aware of a federal law called the wage and hour law?

A I don't understand what you mean?

Q Well, are you aware that there's such a law called the wage hour law, fair labor or standards act, have you ever heard of such a law?

A No, I haven't.

Q And it's your testimony that Mr. Ostreicher said

that if you are eight minutes late you are not docked for pay, is that right?

A That's what he said.

He said a quarter after the hour.

Q So that you have 15 minutes before you get docked for pay?

A That's what he said.

MR. KAUFMAN: I have no further questions.

JUDGE COHN: All right.

MR, KAUFMAN: Your Honor, I would like to -- like the same reservation that Mr. Pollack has,

JUDGE COHN: With regard to the additional cards. yes, of 144.

REDIRECT EXAMINATION

Q (By Mr. Coffee) When Mrs. Pierre was talking to you, Mrs. Terrell, did she make mention of anyone besides Mrs. Mitchell?

A She said --

MR. POLLACK: Fix a time. There are at least two conversations.

Q When Mrs. Pierre --

JUDGE COHN: You are talking about Mrs. Pierre, the LPN Miss Pierre?

MR. COFFEE: Yes, Your Honor.

Q (By Mr. Coffee) When Mrs. Pierre was talking to

you about Mrs. Mitchell representing the aides, did she say anything about Mrs. Mercado at that time?

A She did.

Q What did she say?

A She said she heard Miss Mercado was representative for the LPN's.

Q Now, Mrs. Terrell, isn't it a fact that when you gave your affidavit to the National Labor Relations Baord on January 21, 1975, you told me that you spoke to the girls everyday about Local 144 starting at the time you got the 144 card that Saturday in mid December?

A That's correct.

MR. POLLACK: Your Honor, the form of that question is objectable.

JUDGE COHN: All right.

I will take it. Overruled.

Q (By Mr. Coffee) Is that the truth, what you told me?

A That's the truth.

Q And you said that in your affidavit?

A I did.

MR. COFFEE: No further questions,Your Honor.

JUDGE COHN: How about you, Mr. Cantore?

MR. CANTORE: Hold it one second, Your Honor.

(Pause.)

MR. COFFEE: Your Honor, we would also like to

Q (By Mr. Kaufman) Miss Terrell, after your discharge, did you ever tell a representative from Local 531 that you did -- that you no longer wanted to work at River Manor?

A After my discharge?

Q After your discharge on January, whatever the date was, 13th, that you testified to, did you ever tell a representative from Local 531 not to bother getting your job back for you because you didn't want it any more?

A Under what circumstances?

Q Under any circumstances?

JUDGE COHN: That question you have to just answer yes or no, did you ever tell anybody from 531 that you didn't want your job back?

A I don't recall saying that just like that, no.

Q Tell me how you said it?

A In the -- from the beginning?

Q From anywhere you want to take it.

A All right.

I had a meeting with 531 at River Manor.

The date I do not recall. But it was in March, with Mr. Kranitz, Mr. Charles Kranitz, and the president of 531.

MR. KAUFMAN: Pointing to Mr. Charles Kranitz.

A And it was spoken there at that meeting that they would give me, Miss Terrell, and Miss Townsend, and Miss Pat Devore our jobs back.

And that they would get our jobs back for us on one circumstances, if Mrs. Townsend and myself came down here to the Board of Relations and retrack our statement that we made so they could sign a contract.

And I told him, no, I was not going to be made a liar out of, that the statement that I gave was true.

Q And you don't recall -- do you recall what time this happened, the date?

A I do not know the date it was.

But it was in March. I don't know the date.

Q It was in March?

A It was in March that I was at River Manor there to -- for -- he said he could reinstate us back on the job.

MR. KAUFMAN: I have no further questions.

MR. COFFEE: No further questions.

MR. CANTORE: No questions.

MR. POLLACK: No questions.

JUDGE COHN: No further questions. All right. You are excused, Miss Terrell.

(Witness excused.)

JUDGE COHN: All right.

We will resume at -- we will break for lunch until two o'clock.

BEFORE THE NATIONAL LABOR RELATIONS BOARD
29th Region

----------x

SAMUEL LIEGER AND HARRY OSTREICHER, a COPARTNERSHIP, d/b/a RIVER MANOR HEALTH RELATED FACILITY

and

LOCAL 144, HOTEL, HOSPITAL, NURSING HOME AND ALLIED HEALTH SERVICES UNION affiliated with SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO

Case Nos. 29-CA-4187 29-CA-4187-2

and

LOCAL 531, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

Party in interest

SAMUEL LIEFER AND HARRY OSTREICHER, A COPARTNERSHIP, d/b/a RIVER MANOR HEALTH RELATED FACILITY

and

LOCAL 1115, JOINT BOARD, NURSING HOME AND HOSPITAL EMPLOYEES DIVISION

Case No. 29-CA-4245

and

LOCAL 531, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

Party in interest

LOCAL 531, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

and

LOCAL 1115, JOINT BOARD, NURSING HOME AND HOSPITAL EMPLOYEES DIVISION

Case No. 29-CB-2060

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and

SAMUEL LIEFER AND HARRY OSTREICHER
A COPARTNERSHIP, d/b/a RIVER MANOR
HEALTH RELATED FACILITY

Party in interest

SAMUEL LIEFER AND HARRY OSTREICHER,
A COPARTNERSHIP, d/b/a RIVER MANOR
HEALTH RELATED FACILITY

and

Case No.
29-CA-4307

LOCAL 1115, JOINT BOARD, NURSING HOME
AND HOSPITAL EMPLOYEES DIVISION

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16 Court Street
Brooklyn, New York
July 14, 1975

The above-entitled matter came on for further hearing, pursuant to adjournment, at 9:40 a.m.

BEFORE:

JULIUS COHN, Administrative Law Judge

Appearances:

VINCENT COFFEY, Counsel for General Counsel

VLADECK, VLADECK, ELIAS & LEWIS, ESQS.
Attorneys for Local 144
1501 Broadway
New York, New York

By: ROBERT CANTORE, ESQ., of Counsel

I N D E X

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
FRANK ARNOLD MC KINNEY	874	911		
ENID HOSHING	919m	923		
CHARLES KRANITZ	940	956	962	
ETHEL MAY RUSSELL	969	981	1030	
ELSIE HARRINGTON	1038			

EXHIBITS

GENERAL COUNSEL	IDEN.	EVID.
20	901	907
21	919	921
22A-VV		1016
RESPONDENT		
6Y		1029
7	1039	1042
8	1043	1044
9	1045	1049
10		1054
11	1059	
12	1065	

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Appearances: (continued)

JACKSON, LEWIS, SCHNITZLER & KRUPMAN, ESQS.
Attorneys for River Manor
861 Madison Avenue
New York, New York

By: ARTHUR KAUFMAN, ESQ., of Counsel

GUTTERMAN & POLLACK, ESQS.
Attorneys for Party in Interest
Local 531
71 South Central Avenue
Valley Stream, New York

By: SANDFORD POLLACK, ESQ., of Counsel

***

PROCEEDINGS

JUDGE COHN: Let's go on the record.

The hearing will be in order.

This is a resumption of the hearing postponed -- adjourned on June 19th.

Will counsel please state their appearances for the record.

MR. COFFEY: Vincent J. Coffey, counsel for the general counsel. That's e-y.

MR. CANTORE: Vladeck, Vladeck, Elias & Lewis, by Robert Cantore, appearing for 144.

MR. MC KINNEY: Frank McKinney, business agent, 144.

MR. MORALES: William Morales, business agent, 1115.

MR. KAUFMAN: For respondents, River Manor, Jackson, Lewis, Schnitzler & Krupman, by Arthur Kaufman.

MR. POLLACK: For party in Interest Local 531, Gutterman & Pollack by Sanford E. Pollack.

JUDGE COHN: All right.

Mr. Coffey, are you ready?

MR. COFFEY: I am ready, your Honor.

General counsel calls Frank McKinney to the stand.

JUDGE COHN: All right.

Raise your right hand.

Whereupon,

FRANK ARNOLD MC KINNEY,

having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. COFFEY:

Q Mr. McKinney, state your name and address for the record.

A Frank Arnold McKinney.

My home address?

Q Yes.

A 2333 Fifth Avenue, Manhattan.

Q And what do you do for a lviing, Mr. McKinney?

A I am a business representative for Local 144, Service Employees International Union.

Q And how long have you held that position?

A I have been either a business agent or an organizer since 1967 with the local.

Q How long have you been a business agent?

A 1968, 1969.

Q I direct your attention to September of 1974.

Did you go to River Manor at that time?

A Yes, I did.

Q What happened at that time?

A In September I went to River Manor specifically to try to get some of our East River Nursing --

MR. POLLACK: Your Honor, we are in the area again of calling for narrative on the part of witnesses by way of direct examination.

What the relevance of what this witness is going to testify to is -- is indefinable in our minds.

There is no way we can properly channel this witness'testimony if we are going to be permitting counsel to say in September what happened.

It just seems to me much too broad on direct examination.

JUDGE COHN: I think in the interest of getting this thing moving, why don't you sort of direct him to certain events or certain things, not to a whole year or a month or whatever.

MR. COFFEY: Well --

JUDGE COHN: Because, no -- no, understand, what happens, the witness is not an attorney --

MR. COFFEY: Right.

JUDGE COHN: -- and he starts telling his story, inevitably he is going to say things or include things which are going to give rise to objections which are

constant.

Now, if you channel him along certain areas, then they know what he is going to talk about and they may object or not object in advance.

MR. COFFEY: Your Honor, if I go too much farther, I will be leading the witness.

JUDGE COHN: All right.

Then we will see -- to introduce a topic, you can ask him always one leading question. No one is going to stop you.

MR. COFFEY: All right.

BY MR. COFFEY:

Q Who did you speak to at River Manor when you went therein September of 1974, Mr. McKinney?

A I spoke with Martin Ostreicher, and also --

MR. KAUFMAN: Your Honor --

A -- the nursing director, Mrs. Harrington.

MR. KAUFMAN: -- I object to this whole line of questioning.

Prior to -- well, at the commencement of this trial you specifically asked general counsel whether he was alleging a Midwest Piping situation.

He stated no, he was not, and now we have another witness on the stand who is testifying about events that occurred prior to --

JUDGE COHN: No, I am going to overrule your objection.

I don't know what he's leading to at this point.

He may have been having -- have something other than Midwest Piping theory in mind.

Go ahead.

You met with -- you spoke -- you went there in September.

THE WITNESS: Yes, sir.

JUDGE COHN: Early, late, when in September?

THE WITNESS: I would say the early to middle part of September, your Honor.

JUDGE COHN: All right.

What time of the day was this?

THE WITNESS: This was in the afternoon.

JUDGE COHN: All right.

You said you met with Mr. Ostreicher and Miss Harrington, is that it?

THE WITNESS: Yes, and I think Mr. Laufer was in the office at that time.

JUDGE COHN: Where was this, in an office?

THE WITNESS: This was at River Manor Health Related Facility in Brooklyn.

JUDGE COHN: Yes,but where in River Manor?

THE WITNESS: I guess that was Mr. Ostreicher's office.

JUDGE COHN: Okay.

Go ahead.

Q What happened at that time?

What did they say to you and what did you say to them?

A I knew that --

MR. POLLACK: Objection as to what the witness knew.

JUDGE COHN: Just tell us what the conversation was.

A The conversation was about hiring people that were members of our union from a nursing home that had closed.

JUDGE COHN: How did it -- how did it start?

I mean, what did you say and what did they say?

THE WITNESS: Well, your Honor, the place was newly opened and we knew that --

JUDGE COHN: No, no.

Just a minute.

Where -- the scene of this place that you are in the office, probably you think it is Mr. Ostreicher's office, and present were yourself, Ostreicher, Harrington and maybe -- what's his name, Laufer.

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THE WITNESS: Laufer.

JUDGE COHN: Okay.

You spoke and they spoke presumably.

Tell us what you said and tell us how did it start. Tell us what was said.

THE WITNESS: I asked them about hiring some of our members that had been displaced employment-wise because of the closing of East River Nursing Home.

BY MR. COFFEY:

Q Had they anything to do with East River Nursing Home?

A Yes, they did.

Miss Harrington was the former director of nursing at East River Nursing Home, and Mr. Harry Ostreicher was either sole or part-owner of East River Nursing Home and we knew that he was part-owner at River Manor Health Related Facility.

Q And when you asked them about employing some of your people what was said to you by whom?

A Well, Miss Harrington said that there were a few on the payroll from East River, and I told them that I knew they couldn't hire exclusively from 144, but we had experienced people in the field.

Mr. Ostreicher, Martin Ostreicher, said that they

they were interested in people that could produce high-quality work and they would consider some of the East River people.

Q Now, I direct your attention to late October or early November, 1974.

Did you have occasion to return to River Manor at that time?

A Yes, I did.

I returned there on one occasion with Mr. Morgan who is the director of the nursing home division for Local 144 and -- Miss Rose Stapleton, who was the business agent representing East River Nursing Home when it was open.

The purpose of the meeting at River Manor was to meet with Mr. Harry Ostreicher, the bookkeeper and Miss Harrington to go over the payroll records of the East River Nursing Home members for purposes of retroactive pay --

MR. POLLACK: Your Honor, is there any way we can begin to get an offer of proof?

I don't know where we are going with this.

We had a conversation in my opinion which is completely irrelevant and immaterial.

We are now going into a second one which appears to be equally irrelevant.

JUDGE COHN: Well, let's get to it.

They may have had a certain purpose of East River, but what was said there is relevant to what we are concerned here with.

MR. COFFEY: Okay.

BY MR. COFFEY:

Q Could you tell us what Mr. Morgan told Mr. Osareicher in your presence at that time?

A At that particular time Mr. Morgan told Mr. Ostreicher that Local 144 was definitely interested in and would be organizing there at East River.

MR. POLLACK: Your Honor --

A I mean their River Manor Health Related Facility.

MR. POLLACK: -- if it is offered for the truth of the statement it is improper.

If it is offered for --

JUDGE COHN: Overruled.

Go ahead.

A Mr. Ostreicher -- do you want me to continue?

JUDGE COHN: Yes, go ahead.

A Mr. Ostreicher at that point said he only had a small piece of -- of River Manor and really didn't have that much to say.

And Mr. Morgan's response was, well, you have your son here as the administrator.

And then Mr. Harry Ostreicher said that I don't think he's going to be here that long anyway.

As we were -- we had cleared up the matter on back pay for the East River members and as we were leaving Mr. Harry Ostreicher told Mr. Morgan the man you want to see is in this office, and he pointed to an office that was directly off the hall fromwhere the time cards are located.

Now, I found out later that was Mr. Laufer's office and Mr. Ostreicher and Mr. Morgan went into the office.

When Mr. Morgan came out he said that --

MR. POLLACK: Objection.

MR. KAUFMAN: Objection.

JUDGE COHN: What was that?

Whatis the objection?

MR. POLLACK: Hearsay.

He went into the office and Morgan said --

MR. KAUFMAN: After he went into a meeting that hewasn't even at?

JUDGE COHN: No, he went into -- what did you say, he went into the office --

THE WITNESS: Yes, sir, I said that Mr. Harry Ostreicher and Mr. Morgan, after they had this discussion about him being part-owne and he really didn't have a lot to say.

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JUDGE COHN: In October?

In October?

THE WITNESS: October, November.

I am pretty sure the meeting was in November.

BY MR. COFFEY:

Q Did you have an occasion in December of 1974 to go b ack to River Manor?

A Yes, I did.

Q About when was that?

A That was the first week in December.

Q And for what purpose did you go back to River Manor?

MR. POLLACK: Objection.

Q What did you do when you got there?

A I went in and announced myself to the receptionist and told her I was there to pick up some paychecks for East River workers.

The checks were brought out to me and I left the building.

Q Did you have any -- did you have any other occasion to go back to River Manor in December of 1974?

A Yes, I did.

We were passing out leaflets and pledge cards, trying to organize the place --

JUDGE COHN: When was this?

THE WITNESS: This was in November and December.

JUDGE COHN: Well, yes, but he said -- first you went back sometime in December, you picked up some checks and you left.

Then he's asking you about another occasion in December, right?

THE WITNESS: Right.

JUDGE COHN: Well, when -- the second one, when was that?

THE WITNESS: Your Honor, I probably went back there that weekend but I know specifically during the Christmas holiday period we passed out leaflets with pledge cards attached and we were organizing there.

I met -- I received a call from one of the workers there, Mr. Carlos Emulein, who is a maintenance employee at River Manor.

Q Did you meet with Mr. Emulein?

A Yes, I did.

Q Where did you meet with him?

A Outside of the nursing home or health related facility.

Q When was that?

A In December.

Q Can you narrow it down to when in December?

A It was around the Christmas holiday period.

He called the local 144 office and spoke to Mr. Morgan andMr. Morgan directed him to me and I talked to him by phone and told him I would be out.

Q What happened when you met Mr. Emulein at River Manor?

A Well, he asked me -- he asked what was 144 doing.

I said, we're trying to organize the place and he said, well, I think -- I think you are going tohave a pretty tough time.

It seems like management wants the Teamsters Union --

MR. KAUFMAN: Objection.

I move to strike.

JUDGE COHN: Sustained.

BY MR. COFFEY:

Q When you were talking to Mr. Emulein did you give him anything?

A I gave him some pledge cards.

I asked him to sign up as many people as he could and I would be in touch with him.

MR. KAUFMAN: Your Honor, again, the witness is now testifying as to eventsthat occurred during Christmas time which is subsequent to the date of the recognition agreement and that has no bearing in this proceeding.

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good, then their treatment in their organization campaign would be desparet as to Local 531's treatment.

JUDGE COHN: Well, has this got anything to do with the discharges you have alleged?

MR. COFFEY: We are going to get into that right now.

We will get into that.

JUDGE COHN: Let's hear about that.

MR. COFFEY: All right.

We have one more date that we want to cover before we go into --

JUDGE COHN: I haven't heard any date yet except sometime in December and November.

MR. COFFEY: Okay.

BY MR. COFFEY:

Q I direct your attention to the 28th of December, 1974.

What happened at that time?

A On the28th of December we leavleted River Manor Health Related Facility with leaflets that had pledge cards attached to them.

Q By "we," who do you mean?

A One of the organizers, by the name of Marvin Goodman and myself.

Q Now, at that time did you attempt to enter

River Manor?

A Yes, I did.

Q What door did you go to?

A The front door.

Q And who did you speak to at that time?

A A guard who was a younger black man.

I didn't know his name but I had seen him there on two or three occasions.

He told me he couldn't let me in, that he had instructions not to let any visitors in and not to let anyone from 144 in, so I went back out and kept passing out leaflets to the workers going in and out on the change of shifts.

On that specific day, either that morning or that afternoon I spoke with Emulein also.

Once again he told me that --

MR. POLLACK: Objection.

JUDGE COHN: Sustained.

BY MR. COFFEY:

Q Now, I direct your attention to the 9th of January of 1975.

Can you tell me what happened on that day, the 9th of January, 1975?

A Yes.

We got a call -- by "we," I mean Local 144,

from a Mr. Al Hazell.

He spoke with Mr. Morgan and told him he was from River Manor and he was interested in -- had been interested in Local 144.

MR. KAUFMAN: Objection.

I believe the witness is testifying now to a conversation between Mr. Hazell and Mr. Morgan.

If I am wrong, I certainly will withdraw my objection.

Otherwise, it is hearsay.

BY MR. COFFEY:

Q Did you have a conversation on the phone --

JUDGE COHN: Go ahead.

Q Did you have a conversaton on the phone with Mr. Hazell --

A Yes.

Q -- on that day?

A Yes.

When he finished speaking with Mr. Morgan he gave me the phone.

Q What happened then?

A Mr. Hazell asked me some questions about 144 and about what rights did -- rights and protection did the w orkers have in trying to organize a union for

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themselves.

And I -- I gave a pretty brief response.

I told him -- Mr. Hazell, that I could talk to him in more detail about his questions if we could meet in person.

We arranged to meet that night prior to his going -- going on duty.

Q And did you go to River Manor that night?

A Sure did.

Q About what time?

A Somewhere around 11:15, 11:30.

JUDGE COHN: That's on January 9th?

THE WITNESS: Yes, which was a Thursday.

Q What happened at that time?

A Mr. Hazell and I talked about theworkers' rights, about what kind of benefits the Local 144 had in representation of the members.

Somewhere in there, MissFrazer came. I didn't know her as Miss Frazer then.

The discussion continued for a little while.

I gave Mr. Hazell some cards and he seemed pretty satisfied with my answers and said that he would sign up as many people as he could.

With that I left and went back to Brooklyn Womens' Hospital where we had a strike.

Q I direct your attention to the 13th of January, 1975.

What happened on that day?

A The 13th was the day I got a call from Miss Hazell. He told me that he had been discharged and that Miss Frazer had been discharged and they were at that time ad the State Labor Relations Board down at the World Trade Center.

I told him I would be down as soon as possible, and I went down.

Q When you got down to the State Labor Board, did Mr. Hazell give you anything?

A Yes.

He gave me all of the pledge cards that they had signed up between the time I met him Thursday night and the time I saw him there at the Board that day.

He and Miss Frazer were in the process of filing c harges against River Manor themselves and I signed the complaints in behalf of the two of them.

I also told them that we were probably at the wrong Board office and we would have to withdraw our charges here and file the complaint with the National Labor Relations Board.

Q On January 15, 1975 what happened?

A On January 15th we did file charges against River Manor on behalf of Mr. Frazer -- I mean, Mr. Hazell and Miss Frazer.

We also filed a petition with the region here for an election.

Q Did you get a call from Mrs. Terrell on January 15, 1975?

A I remember getting a call from Miss Terrell.

I think it was the 15th.

Miss Terrell told me that she had been discharged and I asked her did management give her a reason and she said yes, that Miss Harrington said her work wasn't up to par, and that she'dhave to let her go.

I asked Miss Terrell on the phone had she had any warning notice from the home, oral or verbal.

MR. KAUFMAN: Objection.

JUDGE COHN: Overruled.

A And she said no.

I asked her if she had been late chronically.

She said she had been late once and I think that was Chistmas eve -- I mean, New Year's Eve.

I told her to come down to the union office, I would try to help her get a job and I think we should file charges in her behalf.

Q Did you have occasion to go to River Manor and try to get into River Manor in late January 1975, Mr. McKinney?

A Yes.

Mr. Hazell and myself, we were out passing out leaflets in the middle of the latter part of January also and --

Q Where were you passing outleaflets?

A In front of the nursing home, in the early morning, prior to and during the change of shifts, night-shift, coming off, and the day-shift going on.

I tried to go -- go inside to pass out some leaflets and this was another guard,he stopped me and told me that he couldn't let me in the building so --

Q Tell me, do you know the names of either of the two guards that you spoke to?

A No.

I knew them by sight but I didn't know their names, no.

Q What did the guard say to you at that time?

A He said he couldn't-- he couldn't let me in.

He had instructions not to let me in.

So I went back out and continued passing the leaflets out from outside and after everybody went in Mr. Hazell and myself, we went around to the back, and

Mr. Normil and Mr. Box had opened up the back door where the kitchen was located and Mr. Hazell and I, we went in the first door.

And between the first door and the second door we were talking about the union and 144.

Q Now, didyou have an occasion to try to get into River Manor in late February 1975?

A Yes, I did.

Once again we were out either passing out cards or leaflets or both and Local 531's representatives came out while wewere doing this and they had a meeting scheduled inside, I guess.

At any rate, while we were outside passing out the leaflets they went in and I could see both of the Teamsters representatives and Mr. Ostreicher and Mr. Laufer through the window.

Q Did you try --

A I tried to go in myself and the guard once again told me he couldn't let me in.

Q Is that the same guard you spoke to in late January, or was it the same oneyou spoke to --

A This was the younger black guard.

Q Was that the guy you spoke to on the 28th of December or in late January?

Was that the first guard you saw or the --

A I think this was the second --

Q The same guard that you had just previously been refused entrance in late January?

A In late January, right.

Q What did you tell him and what did he say to you in late February?

A Well, I told him that I wanted to go inside, and he said no, I can't -- I've got instructions not to let you in.

You know, I've got instructions not to let you go in.

Q Did you say why youwanted to go in?

A I am positive I told him that I was from Local 144 and we were organizing out there.

Q And did you say why you wanted to go inside the building?

A I think I said something about if the other local ws in there, we wanted to go in too.

Q Did you say you wanted to speak to employees?

A I think I did.

Q And what was his response to that?

A That he couldn't let me in, he had instructions not to let me in.

MR. COFFEY: Mark this as General Counsel's Exhibit 20 for identification.

(Document marked General Counsel's Exhibit 20 for identification.)

BY MR. COFFEY:

Q Now, I direct your attention to late April 1975.

Did you find out anything concerning a meeting by River Manor -- by Local 531 with employees at River Manor in late April of 1975?

A Yes, I did.

Q What did you find out about and how did you find that out?

A I received calls from --

MR. KAUFMAN: Objection, your Honor.

JUDGE COHN: Overruled.

MR. KAUFMAN: There is no allegation in the complaint about late April.

JUDGE COHN: Let's see.

Overruled.

A I received calls from Miss Terrell, Mr. Hazell and Miss Frazer stating that the Teamsters had posted a notice that they were going to have a -- a meeting on May 1st at River Manor.

Q Were you given a copy of the notice?

A Yes.

Q Who gave it to you?

A One of the, the three -- I am not positive which one

Q What happened on May 1st --

A I was accompanied out to River Manor by Mr. Frank Russo, business agent for Local 144, and Mr. Jerome Ottley, organizer for Local 144.

We waited outside and one of the Teamsters representatives drove up and parked and went out -- went inside with some material -- it looked like he had some material under his arms.

So when he went in we went in.

Q How did you recognize him as a Teamsters representative?

A I had seen him out there several times prior.

Q Was he familiar to you as a Teamsters' representative?

A Yes.

Q Do you know his name?

A No, but he's been in here -- he's got a Spanish surname.

Q What ahppened then?

A Well, he went in and the three of us went up to the door.

I told the guard that we are here for the union meeting.

So he said, sign the book, so we signed the book or I signed in behalf of myself and the other two and

the three of us went in.

We went up to the counter and the receptionist asked us what we were there for and we told her that we wanted to see Mr. Ostreicher, we were here for the union meeting.

And so she went back and I told her who I was and where I was from.

Q To make along story short, --

JUDGE COHN: Please do

Q -- when the management became aware that you were there were you told to leave?

A I was told that if I didn't they were going to call the cops and Mr. Laufer called thepolice and as this was going on --

Q Who told you they were going to call the cops?

A Mr. Laufer.

The workers becan to congregate around the area. We weretalking in --

Q After you -- after they told you they were going to call the cops did you leave?

A Not immediately.

Q But did you leave subsequent to that?

A Yes.

Q Okay.

A After the second set of cops came.

CSA Reporting

JUDGE COHN: It took two sets?

THE WITNESS: Yes.

The plain clothes man came at first and they said they didn't want to have anything to do with it, get some uniform policemen.

So they called the uniform policemen.

MR. COFFEY: No further questions.

MR. KAUFMAN: Any affidavits or statements?

MR. COFFEY: Yes.

JUDGE COHN: Off the record.

(Discussion off the record.)

JUDGE COHN: Let's go back on the record.

I neglected to ask you if you had any questions, Mr. Cantore.

MR. CANTORE: No, your Honor, I don't have any questions.

JUDGE COHN: All right.

Mr. Kaufman.

CROSS-EXAMINATION

BY MR. KAUFMAN:

Q Mr. McKinney, directing your attention to the evening of January 9, 1975 -- well, directing your attention first to the day of January 9th, I believe you testified you got a call from Mr. Hazell.

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A Right.

Q And you said that you were going to meet Mr. Hazell at the nursing home that night?

A I think I said -- I -- I testified that we, over the phone arranged to meet there prior to his going on duty.

Q What time did you say you arrived?

A Somewhere around 11:15, 11:30.

Q And was Mr. Hazell already there?

A Not positive, Mr. Kaufman.

Q Do you know how long your conversation with Mr. Hazell lasted?

A Oh, I would say about -- about 20 minutes.

I know that prior to my leaving it wasn't quite time for him togo on duty, so it was prior to 12:00 before I got there.

Q And I believe you also testified that at the time that you met Mr. Hazell you didn't know who Brenda Frazer was, is that correct?

A I think I said somewhere during the conversation with Mr. Hazell the young lady came up there and I didn't know her as Miss Frazer and when -- when she came into the conversation. I found out afterwards.

Q Well, when you say afterwards, was that afterwards on the following day or afterwards when?

A I think it was the same -- the same night.

introduced to you that night, is that correct?

A I probably didn't because Mr. Coffey was writing almost verbatim.

Q He was writing verbatim and this is dated January 20, 1975, is that correct?

A I have to see, yes.

Q And would you agree with me that your memory of facts are better closer to the date that they occur rather than six months down the road? Do you agree?

A On some things.

Q How about on this thing?

Was your memory about what happened on January 9th better on January 20th than it is today?

A Oh, I am sure it is in certain areas.

I don't think it is any better in other areas.

Q Now, I ask you again, do you recall if Miss Frazer was introduced to you on that night?

A I recall that Miss Frazer was introduced to me that night.

Q She was introduced to you that night?

A Yes.

Q And you didn'tgive MissFrazer any cards, isn't that right?

A I think I gave all the cards to Mr. Hazell.

Q And what, if anything, did Miss Frazer say to you

after she was introduced toyou?

A It seems to me Miss Frazer said something about job protection and their rights.

It seemed like they were both very concerned about if they organized, what would happen to them, what kind of job protection would they have.

Q And after you left did Miss Frazer leave with you?

A No.

Q After Mr. Hazell left -- did you leave before Mr. Hazell left?

A As I recall,Mr. Kaufman,they were both standing outside when.I left.

Q And it is your testimony that you had given all the cards to Hazell, is that correct?

A To the best of my recollection, yes.

MR. KAUFMAN: All right.

I have no further questions.

MR. POLLACK: I have no questions, your Honor.

JUDGE COHN: Redirect.

MR. COFFEY: No further questions.

MR. CANTORE: Nothing, your Honor.

JUDGE COHN: Thank you.

(Witness excused.)

MR. COFFEY: We would like to recall Miss Hoshing

Whereupon,

ENID HOSHING,

having been previously duly sworn, resumed and testified further as follows:

JUDGE COHN: Miss Hoshing, you are still under oath.

DIRECT EXAMINATION

BY MR. COFFEY:

Q Mrs. Hoshing, directing your attention to the meeting of January 20, 1975, how did you become aware that there would be a meeting on January 20, 1975?

A There was a notice on the bulletin board at the home.

Q And how long before the meeting did you see the notice on the bulletin board?

A Maybe two days or a day before.

I am not sure.

Q Do you know who put the notice up there?

A I don't know.

MR. COFFEY: Would you mark this as General Counsel's Exhibit 21.

(Document marked General Counsel's Exhibit 21 for identification)

BY MR. COFFEY:

Q I direct your attention to General Counsel's Exhibit

MR. KAUFMAN: Yes.

JUDGE COHN: As to whether the notice said there will be a general meeting?

MR. KAUFMAN: And the rest of it.

JUDGE COHN: Well, is that untrue that the notice was posted and said there will be a general meeting?

MR. KAUFMAN: I have no knowledge of that, whether there was a meeting or not.

JUDGE COHN: All right, I will receive it.

(General Counsel's Exhibit 21 for identification was received in evidence.)

BY MR. COFFEY:

Q Mrs. Hoshing, the business representative of 531 who conducted the meeting, is he in this room?

A Yes.

Q Who is he?

A That gentleman there (indicating).

MR. POLLACK: The witness has identified Charles Kranitz.

Q During this meeting did Mr. Kranitz say at any time that he had been at the home before January 20, 1975?

MR. KAUFMAN: Objection.

A question like that is highly irregular and very leading.

JUDGE COHN: Ask her -- you can ask her what he said but don't ask it in that manner.

MR. COFFEY: We are trying to avoid going through these narrative type of things, your Honor.

JUDGE COHN: I know.

You are giving her, you know, a most elementary type of leading question calling for a yes or no answer to your statement which is contained in your question.

MR. COFFEY: All right.

BY MR. COFFEY:

Q What did Mr. Kranitz say, if anything, concerning when the contract that he was talking about had been drawn up?

MR. KAUFMAN: Objection.

JUDGE COHN: Overruled.

A He talked about the contract. He read the contract to us and he said he was there in November of '74 and that was drawn up between management -- the benefits he read to us, that were drawn up between management while he was at the home in 1974.

Q Did he say --

JUDGE COHN: When in 1974?

THE WITNESS: November 1974.

MR. COFFEY: Okay.

That's it, your Honor.

MR. POLLACK: Your Honor, before we proceed, I think to permit this witness to give testimony this way works a disservice upon the trier of facts, as well as all those attempting to try a case.

I assume that the meeting which the witness has discussed concerns the January 20th membership meeting whereat many of the witnesses who have already been on the stand were present.

We now have to parage every single witness back before you to find out what their recollection of this meeting was.

There is no other way to cope with this kind of technique.

We are now going to retry this entire case and I object and move to strike.

JUDGE COHN: Overruled.

You people may cross-examine.

MR. POLLACK: May we have the affidavit again?

MR. COFFEY: Yes.

(Document handed to Mr. Pollack.)

CROSS-EXAMINATION

BY MR. POLLACK:

Q Before testifying this morning did you have an opportunity to read your affidavit?

A I had that from the first time I was here.

Q You had your affidavit from the first time you were here?

Was that your answer?

A But I didn't read it.

Q You have not read your affidavit between the time you last testified and today?

A No.

Q What about a copy of the affidavit, did you read that?

A I read it the last time I was here.

Q But you didn't read it -- between the last time you were here and this morning you didn't read an original or a copy of that affidavit, is that your testimony?

A Yes.

Q And prior to your testifying the last time you were here did you read that affidavit?

A Yes.

Q And do you recall now if that affidavit had anything to say about the meeting on January 20th with the representative of Local 531?

A Yes.

Q And do you recall whether or not that affidavit had anything to say about the date November --

A Anything to say about the date in November?

A I remember what he read to us, the benefits.

He told every member at the meeting.

Q Do you remember how long the meeting took place?

A I don't remember.

Q Were there any questions from the audience?

A Yes.

Q Do you remember who asked questions?

A I asked a question.

I asked -- do you want to hear the question?

Q No.

A Oh.

Q Do you recall your earlier testimony concerning what Mr. Kranitz said about November?

A Yes.

What he said about November?

Q Do you recall those words, he read the agreement that he said was drawn up by management?

Do you remember him saying that?

A Yes, he said that.

Q So now tell us then what it was Mr. Kranitz said concerning the agreement.

A He talks about the benefits that we would get --

Q No.

Let's see. You today told us that Mr. Kranitz

said that he was there in November.

A Yes.

Q And he worked out an agreement; isn't that what you said this morning?

A He said he had drawn up an agreement with management.

Q He said he had drawn up an agreement with management, right?

A With management, right.

Q Now, whoch is it, did he say he drew it up or did he say management drew it up?

A He had drawn up an agreement with management.

Q Oh, so when you testified last time you were here that he stated, "Well, he read the agreement that he said was drawn up by management,' that statement was incorrect?

A Was drawn up with management --

Q So theway I read it toyou that was incorrect?

MR. POLLACK: Your Honor, I call your attention to the transcript, page 162, specifically line 22.

BY MR. POLLACK:

Q, Now, I read another answer toyou.

Your answer is:

The last time he was there was in November. So we asked him what if we choose our own union.

Can you now tell us what you recall he said about November?

A He said he was there in November 1974.

Q That's what he said about November, isn't that true?

A And he had drawn up a contract with management, that's what he said while he was there in November.

MR. POLLACK: Okay.

Your Honor, again on the same page, lines 23, 24, 25 and line 1 of the following page.

JUDGE COHN: That's all - page 162 and one line on 163?

MR. POLLACK: That's correct, your Honor.

Your Honor, this is so improper it is clearly rebuttal.

JUDGE COHN: Well, okay.

Anything further?

MR. POLLACK: Nothing, your Honor.

JUDGE COHN: Oh, okay.

Do you have something else?

MR. KAUFMAN: Yes.

BY MR. KAUFMAN:

Q When you testified the last time you were here and testified about the January 20th incident, were you telling the truth then?

A Yes.

BY MR. KAUFMAN:

Q Is it your testimony that between now and -- between the last time you testified and today you have not looked at your affidavit?

A No.

Q No, you have not looked at your affidavit or no, you have?

A No -- I didn't look at it.

Q And is this something that you recalled and then contacted Mr. Coffey to tell him you forgot to mention?

A Forgot to mention?

Q Your testimony today, you just came here to testify and you are testifying about some words that Mr. Kranitz said?

Is this something that -- after you left the witness stand that you remembered that you forgot to say and then called Mr. Coffey?

A No, I didn't.

Q Oh, it didn't happen that way.

Did Mr. Coffey tell you -- did he call you?

A Yes.

Q And did he tell you that you forgot tomention something in your affidavit?

A He said some questions he didn't ask and he wanted to ask me.

Q Did he tell you what those questions concerned?

A About the meeting.

Q Did he ask you whether or not that happened at the meeting?

A What happened at the meeting?

Q Did he ask you whether or not Mr. Kranitz said that at the meeting when he spoke to you?

A Yes.

Q And is that how you became aware ofwhat the affidavit said?

A Yes.

MR. KAUFMAN: I have no further questions.

JUDGE COHN: Mr. Coffey?

MR. COFFEY: No further questions.

JUDGE COHN: Thank you, Miss Hoshing.

(Witness excused.)

JUDGE COHN: Do you have anything further, Mr. Coffey?

MR. COFFEY: We will call Charles Kranitz to the stand for a short -- a few questions.

MR. POLLACK: I assume he's being called under 43B, your Honor.

MR. COFFEY: Right.

MR. POLLACK: Before we enter Mr. Kranitz in I would like to take up a motion to strike the testimony of

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this witness.

It is clearly impeaching of the testimony which had been earlier given, called for by counsel for the general counsel who had called her initially and now recalled her.

MR. KAUFMAN: Your Honor, I have to join in that.

I find it highly irregular that when counsel for the general counsel has a witness on the stand and asks him to relate a whole conversation and the witness does and then to call that witness back after you have had a chance to peruse the transcripts for the purpose of reinforcing a part of the transcript it seems to me highly irregular.

MR. POLLACK: It is not even reinforcement.

It's impeaching and I ask you to read those four lines --

JUDGE COHN: I am going to and I will act accordingly when --

MR. POLLACK: Again, your Honor, if we don't have a ruling on my motion to strike we are faced with that -- counsel for respondents and myself are faced withthe problem of now having in our case in chief trying to refute that.

We are prepared to --

JUDGE COHN: I would assume thatyou would be prepared

the last time was the truth. That's it.

MR. COFFEY: I didn't take it that way, your Honor.

We would like some redirect on that --

JUDGE COHN: Well, look, Mr. Coffey, how much of this thing do you want?

I am sure you understand what I was doing was more or less in the interest of giving you an opportunity to put everything you had in and what you did was somewhat irregular.

If you wanted to call this witness back on rebuttal there was nobody in this courtroom that was going to prevent you from doing it but instead you call her back because you allegedly did forget to ask her a few questions.

I thought thatyou were going to talk to her about some avenues or something that happened that was not part of your -- of her original testimony.

Instead, you --

MR. COFFEY: It basically wasn't.

JUDGE COHN: Well, he just said -- read --

MR. COFFEY: He read.

JUDGE COHN: I have it in my notes, what she said last time, Mr. Coffey.

I didn't have it verbatim, as it appears in the

record but it is the same subject matter.

It is noi as if it was an incident or a meeting or whatever she hadn't testified about and that you inadvertently had forgotten.

I thought I'd give you an opportunity for that reason so she comes up here and she is talking about the same January 20th meeting that I have in my notes and I am sure all of you people have in your notes, and of course the record -- it is there.

How do you want me to do it?

All right.

Let's get on with it.

You are calling Mr. Kranitz under 43B, is that right?

MR. COFFEY: Yes.

JUDGE COHN: Okay.

Raise your right hand.

Whereupon,

CHARLES KRANITZ,

having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. COFFEY:

Q State your full name.

A Charles Kranitz.

during November representatives of 144 and 1115 were denied access.

There is no testimony about any incidents in November.

MR. COFFEY: We will go along with that, your Honor, if you want to strike that.

JUDGE COHN: I will tell you -- in other words, you are conceding that?

MR. COFFEY: Yes.

JUDGE COHN: All right, I will grant the motion to strike paragraph 11.

MR. COFFEY: No, not paragraph 11, just November.

JUDGE COHN: Wait a minute.

MR. POLLACK: The second line of --

JUDGE COHN: Oh, I see.

The motion that is granted as to any allegation contained in paragraph 11 relating to November 1974.

MR. KAUFMAN: Paragraph 13C.

MR. COFFEY: I think that goes to the heart of our complaint, your Honor.

I think there has been much evidence that agents and supervisors of the home coerced employees into signing cards.

MR. KAUFMAN: Except that 13C relates to A and B and certainly the allegations of paragraph 13B --

DIRECT EXAMINATION

BY MR. POLLACK:

Q Mr. Kranitz, did there come a time in December of 1974 when you were present at a card check in behalf of the employees for River Manor?

A Yes.

Q Can you tell me who performed the card check?

A A former employee of the NLRB -- Brooklyn, by the name of Jerome Katz..

Q Can you fix the date for us on that?

A The afternoon of December 9th 1974.

Q Now, at that time did you give it -- to this Mr. Katz, any documents?

A Yes, sir.

I gave him the check-off application cards.

Q I show you the following -- I will read the list into the record for the sake of brevity.

I show you -- party in interest Exhibit 4, General Counsel Exhibits 2,5,6 and 9 through 13, party in interest 5A,B,C,D,E,F,G,H,I,J,K.M.N,O,Q,R,S,U,V,W,X.

I ask you if those were the cards that you showed to Mr. Katz on the afternoon of December 9th.

A Yes.

Q And in your presence did Mr. Katz examine these cards?

A No, sir.

Q Did Mr. Katz take these cards with him?

A Yes.

Q What happened?

What did he do?

A I gave him the cards. He turned to Mr. Ostreicher and asked him for the W-4 forms and any other signatures they would have his present employees on.

Mr. Ostreicher instructed someone to turn such papers over to Mr. Katz.

Mr. Katz -- the papers were brought into the room. Mr. Katz took those papers and those cards and left the room.

Q And when he came back did he make any announcement?

A Yes.

Hesaid the cards were authentic, and the card check was proper.

We also entered into a stipulation, that is the recognition.

Q Did anybody indicate the total number of employees?

A Yes.

Q Do you recall what it was?

A Approximately 37, 36.

Q Do you recall the number of cards you handed to Mr. Katz?

A Approximately 30 31, something like that.

Q I ask you to look at the cards and ask whether they are application for membership cards or dues check-off cards.

A Application cards only.

Q And are those the type of cards that were used by you in your office in the organizational campaign at River Manor?

A Yes.

Q I call your attention to a meeting of January 20, 1975 with the employees of River Manor.

Were you present at such meeting?

A Yes.

Q Did you describe to the employees the mechanics that went into the negotiations of collective bargaining agreement?

A Yes.

Q Would you tell us what you told the employees?

A I told them about the former officer of the NLRB conducting a card check against their signatures and that made it official that we should be able to sit down and negotiate a contract with River Manor.

Q Did you tell the employees when that card check occurred?

A Yes.

I told them it was December 9th, it became official December 11th and due to the fact they were right before the holidays, it was a little difficult to get the negotiating committee together and we should walk in and speak to Mr. Ostreicher about the negotiations, give him a list of demands.

I gave him a list of demands on January 9th after I spoke to my negotiating committee.

Q This is your report on January 20th to the membership?

A Yes.

And we had a few meetings thereafter within a few days and this is what so far he agreed to.

I read thecomplete contract including the economics and language or grievance machinery to all the people.

I told them there is not a signed contract as yet, and that if they had any further inclinations or were against the contract,what their grievances were, what they decided was not proper and what they were looking for.

And the sum total of what they were really looking for was more money.

Q Did you make anyreference during that meeting to having negotiated a contract with River Manor in November of 1974?

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A No.

Q And did you tell the employees who prepared the contract?

A Yes.

Q What did you say?

A I told them the union prepared this contract after negotating with Mr. Ostreicher.

MR. POLLACK: I have no further questions.

CROSS-EXAMINATION

BY MR. COFFEY:

Q You said --

MR. KAUFMAN: I have some questions.

JUDGE COHN: Wait a minute.

MR. COFFEY: Does he go before me?

JUDGE COHN: Yes.

MR. KAUFMAN: I have no questions. I just wanted to preserve our order.

JUDGE COHN: All right.

BY MR. COFFEY:

Q Where were the negotiation meetings on the contract held?

A At River Manor.

Q All of them?

A Yes.

Q How many were there?

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A Three.

MR. POLLACK: May we be off the record a minute?

JUDGE COHN: Off the record.

(Discussion off the record.)

JUDGE COHN: Back on the record.

MR. POLLACK: As you know, I've shown the witness certain cards, the identification of which has been read into the record.

In order to make sure the record is complete, I would move each and every one of these cards that has not yet been accepted into evidence, into evidence.

JUDGE COHN: Well, off the record.

(Discussion off the record.)

JUDGE COHN: On the record.

MR. POLLACK: Again, just to make the record clear, 5A through Xhave in fact been moved into evidence and accepted in evidence.

MR. COFFEY: Yes.

MR. POLLACK: And this witness has just excluded from his report of what was given to Mr. Katz, 5K,L,P and T.

JUDGE COHN: All right.

I hope thatclarifies the record.

Proceed.

BY MR. COFFEY:

GEO

Q This is party in interest Exhibit 6 in evidence.

Is that the recognition agreement that you signed on that day?

A I didn't sign this.

Q Or thatwas signed on that day?

A Yes.

Q Signed on the 9th of December?

A Yes.

Q And was there any discussion -- it says the collective bargaining agreement shall be the union's usual contract.

Did you have a contract drawn up?

A No.

Q What did you mean in that that -- where it says the union's usual contract?

A Exactly what it says.

The usual contract -- the language of the usual contract.

Q What was the intention of that phrase in the agreement?

A Well the contract has various clauses, union security, grievances, et cetera.

The contract was blank as far as economics were concerned and as of December 9th I wanted it clearly understood that the-- there would be no union security clause, and no objection to it, there would be griavance

machinery and no exception to it, no strike, no lock-out clause, and no exception to it.

And that there wereother clauses referring to what happens in case he doesn't remit his money properly, et cetera.

Q And at the time the company agreed that there would be a union security clause among others?

A Yes.

Q I notice on the -- on party in interest 6 it says all terms finally agreed upon shall be retroactive to, and it says date and something is crossed out there.

What is crossed out?

A You can read it.

Q I would like you to read it.

A Ask me to read it.

Q Would you read it?

MR. POLLACK: The document speaks for itself.

A That is quite obvious here. It is December 9, 1974.

MR. POLLACK: I believe Mr. Coffey is referring to the line in the middle of the page that says the word date.

JUDGE COHN: It says December 9, 1974 and it is crossed out.

THE WITNESS: Right.

Q Why was itcrossed out?

A Because Mr. Ostreicher at that time flatly refused to agree to the December 9th as a restroactive date.

Q It was signed on December 9th.

A That has nothing to do with the retroactivity.

I put down December 9th because I had asked him and there was a big fight about it.

Q Was this written material on the bottom of the document also agreed to?

A Yes.

Q Would you read it to us?

A As further agreed that in theevent the parties don't agree on the terms of the contract theparties can submit the matter to the New York State Board of Mediation for an arbitrator who will set forth -- we -- who will set the terms and conditions of the contract, such submission shall be binding and final on both parties.

Initialled by me and Mr. Ostreicher.

That's my handwriting.

Q I direct your attention toparty in interest 7. Is that the arbitrator assertion prepared by Mr. Katz?

A Yes.

Q Does the date December 9th appear anywhere in the body of party in interest 7?

A No.

Q What date does appear on that?
A December 11th.
Q And it appears how many times?
A Once, twice.
Q Is it signed and notarized?
A Yes.
Q About what time did you arrive at River Manor on December 9th?
A 2, 2:30, 3:00. I don't remember.
Q Did you get any cards on that day by anybody?
A Sure.
Q Did the union receive any cards on December 9th?
A Yes.
Q Who received them?
A Mr. Montinez.
Q Who gave them to him?
A Don't ask me. I wasn't there.
Q Who is Mr. Montinez?
A An organizer for Local 531.
Q What time did he get to River Manor that day?
A I have no idea.
Q Was he there when you arrived?
A Yes.
Q What time was the recognition agreement signed?
A About 4, 4:30, 5:00.

Q Were the Montinez cards that he received on the 9th part of those that were used --

A That I gave to Mr. Katz, yes.

Q Had you ever gotten cards from any employees yourself?

A No.

MR. COFFEY: No further questions.

REDIRECT EXAMINATION

BY MR., POLLACK:

Q On December 9th when you were --

JUDGE COHN: Hold it.

Mr. Cantore has some questions.

BY MR. CANTORE:

Q This proposed contract of January 20th do you have any recollection as to what were the economics of that contract?

MR. KAUFMAN: Objection.

I would object to the relevance.

JUDGE COHN: Overruled.

A I don't remember offhand.

I have to have it in front of me. I know there were wage increase, the hospitalization, the sick leave, vacation, holidays.

Q And this was never signed?

A Never signed, no.

Q No contract was ever signed calling for contributions to health and welfare?

A No.

Q No contract was signedcalling for dues check-off?

A No.

MR. CANTORE: No further questions.

BY MR. POLLACK:

Q On December 9, 1974 when you were in Mr. Katz' presence, did he write any assertion out?

A No.

Q Could you tell us what the mechanics were with respect to the assertion which is party in interest 7 and which you have been shown?

A After we got through with the oral part and they signed the negotiation, Mr. Katz by that time returned whatever material Mr. Ostreicher gave him, turned the cards back to us, and when we left said he will mail in the arbitrator's assertion.

Q And did you in fact receive thatassertion which you have in front of you?

A Yes, I have a copy.

Q In the mail?

A I have a copy in the office.

Q Can you fix the time when you received it in the mail?

Q Is this the union's proposal or the employer's proposal because I characterize an unsigned agreement as a proposal?

A Mr. Ostreicher said I agree to this, this and this. I said, I am not happy with it but I will bring it back to the people. If they agree, fine.

If they don't agree we have to sit down some more.

Q So in other words --

A Like a ratification.

Q This proposal -- first of all, was on your own union form?

A Yes.

Q All the things you wouldhave in the contract?

A Yes.

Q Butthen the rest of it was his last offer so to speak up to that point?

A Yes.

Q As to wages, economics?

A Yes.

Q Then you put upto them and said this is what we have got so far.

Do you peoplehave any suggestions or changes? Is that the idea?

A Yes.

At that time I picked from the group four or more --

four people that would continue further negotiations.

Q You mean on January 20th you picked more people?

A Yes.

JUDGE COHN: All right.

Anything further?

MR. COFFEY: We would like to ask a few questions about the negotiating committee, your Honor, who was on it, which employees.

THE WITNESS: I don't recall all the names.

BY MR. COFFEY:

Q Was Mr. Xox on it?

A I think so.

Q Mrs. Mercado?

A Mercado was in the beginning and then left.

Q Yes. Mrs. Mitchell?

A I don't remember.

The other cook, Mark.

Q Bassano?

A Bassano I think, sat in a couple of times.

After January 20ty it was Mrs. Tutt.

I don't remember all the other names.

Q When was the last negotiation session?

MR. POLLACK: Objection.

MR. COFFEY: Withdraw the question.

Q Do you know anyone else on the committee?

A I know a lot of them by face.

I don't remember the names.

Q Who was present at the last negotiation session?

MR. POLLACK: Again, your Honor, the identity of thecommittee is probably relevant because the witness said, we picked four more members, we -- but who was present at which meeting is beyond the scope.

JUDGE COHN: It is beyond the scope and he told you he's given you the names of the people he remembers.

Q Were all the people on the committee employees of the home?

A Yes.

MR. COFFEY: Nothing further.

JUDGE COHN: Okay. Thank you.

(Witness excused.)

JUDGE COHN: We will break for lunch until quarter to two.

(Luncheon recess taken at 1:38 p.m.)

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A F T E R N O O N S E S S I O N

(The hearing reconvened at 1:50 o'clock p.m.)

JUDGE COHN: Let's go back on the record.

The hearing will be in order.

You have a stipulation, Mr. Coffey?

MR. COFFEY: Right. Yes, Your Honor.

In an off the record discussion and with the use of the time record book the parties agree now that as to the date 1/8/75, the time record Brenda Frazer has written therein that she clocked in at 12:14 on January 9th and 8:07 on January 9th she clocked out.

Alma Robinson has written that she clocked in at 11:03 on the 8th and she clocked out 8:04 on the 9th.

As to the date in the time record book labled 1/9/75, Albert Hazell has written therein that he clocked in at 11:38 on 1/9 and clockedout 11:05 on 1/10.

MR. KAUFMAN: 8:05.

MR. COFFEY: 8:05 on 1/10 and Alma Robinson has written therein that she clocked in at 11:46 on the 9th and clocked out 8:09 on the 10th.

As to the date 1/10/75 in the book, that's labled 1/10/75 Alma Robinson has written therein that she clocked in at 11:58 on the 10th and clocked out at 8:01 on the 11th.

Hazell wrote therein that he clocked in at 11:48 on the 10th, and clocked ou at 8:05 on the 11th.

JUDGE COHN: Do you all stipulate that these statements just made by Mr.Coffey reflect the accurate representation of what's in the -- what do you call that book?

MR. KAUFMAN: The time record book would so indicate that for these employees these are their times.

JUDGE COHN: All right.

The stipulation is received.

Do you have anything else along those lines?

MR. COFFEY: No, Your Honor, not at this time.

MR. POLLACK: The party in interest rests, Your Honor.

JUDGE COHN: Okay.

I will accept that.

MR. KAUFMAN: Should I get my first witness?

JUDGE COHN: Yes.

MR. KAUFMAN: We call Miss Russell.

JUDGE COHN: Raise your rightn hand, please.

Whereupon,

ETHEL RUSSELL

was called as a witness, having been duly sworn, testified as follows:

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DIRECT EXAMINATION

Q (By Mr. Kaufman) Mrs. Russell, will you give us your fullnameand address for the record?

A Ethel May Russell, 15-42, 197th Street, St. Albans, New York.

JUDGE COHN: Miss Russell, you're going to have to talk up loud so we can all hear you.

THE WITNESS: Yes, sir.

Q Mrs. Russell, by whom are you employed?

A River Manor Related Center.

Q And in what capacity are you employed?

A Charge nurse.

Q Excuse me?

A Charge nurse.

Q Charge nurse?

A Yes, LPN.

Q Where is that?

A What, the place?

Q What shift?

A Oh, twelve to eight.

Q And?

A Eleven some days.

Q Are you familiar with Local 531 of the Teamsters?

A Am I what, familiar with it?

Q Are you familiar with the name Local 531?

A Yes, yes.

Q Of the Teamsters?

A Yes.

Q Did there come a time during the month of either November or December that you had the occasion to sign a card for Local 531 of the Teamsters?

A Yes, I did.

Q Would you tell us under what circumstances -- well, let me ask you this:

At the time thatyou signed the card, did other employees on the night shift sign cards?

A Yes.

Q Okay.

Did you have any conversation with the employees on the night shift concerning those cards?

A Yes.

I told them when I came in on duty -- they came in, I said, "Here is cards from the union, you could sign it if you want to, if you don't, you don't have to."

Q Where were those cards?

A On the desk.

Q Did you hand out the cards to them?

A No, I didn't have to. They were right on the desk. I hand myself one and sign it.

Q Did the employees pick up those cards?

A Yes.

Q Do you recall when that was?

A What date

Q Yes.

A Somewhere around January -- I don't know.

No, I don't really know.

Q Do you recall who was there?

A That night?

Q Yes.

A No.

Q I show you Party in Interest Five-W which is an authorization card for Local 531, of the Teamsters.

A That's mine.

Q Isthat your signature?

A Yes.

Q Is this the card which was on the desk?

A Yes.

Q Now, did you ever -- you told us what you said to the employees.

A Yes.

Q Did the employees say anyting to you, the other night people?

A No, they only said that they didn't care for the 531 cause it was a teamsters union and it seemed it wasn't qualified for the hospital cause we had got a pamphlet

with -- what doyou call it -- the chauffeurs or whateveryou call it on there.

Q Did you make any comments about that?

A No.

Q Did you ever tell them that it they didn't sign the card, they would be fired?

A No.

Q Did you ever tell them that Miss Harrington --

A No.

Q -- had said they hadto sign the card?

A No, no, no.

Q Did you ever indicate to them that they had to sign the card for the home?

A No.

Q Now, did the employees sign the cards?

A Yes.

Q And had anyone from management ever told you to tell the employees they had to sign those cards?

A No.

Q Had Miss Harrington -- more directly had Miss Harrington ever asked you?

A No one had.

Q Had anyone from management or in particular Miss Harrington ever told you if employees didn't sign, they would be fired?

A No.

Q Did you sign a card?

A Yes.

Q Are you familiar with an employee by the name of Brenda Frazer?

A Yes.

Q What shift did Brenda Frazer work?

A Twelve to eight.

Q Do you know if Miss Frazer signed a card for Local 531?

A Truthfully, I don't know.

I don't know because whoever signed the cards that night, I don't really know who came on duty that night.

Really, I can't say.

Q Did you ever have any knowledge that Miss Frazer was active for any other union other than 531?

A No.

Q Did you have any knowledge that Miss Frazer was active for any union including 531?

A 531 I presume is the one that was there, what we know about.

Q Did you have any knowledge that Miss Frazer was active in her support for Local 144?

A Not as I know of.

Q Did you ever have the occasion in December to talk

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to Miss Frazer about her absentee?

A Yes.

Q About her latenesses?

A Yes, I spoke to her.

Q Could you tell us approximately when thathappened and what was said?

A Sometime in January, I don't know just when, but in January she had been coming in late a few times and Miss Harrington had told me to please speak to her and I did --

MR. POLLACK: I'm sorry, may I have that name?

THE WITNESS: Miss Harrington.

MR. POLLACK: Thank you very much.

A (Continuing) She told me to speak to her about the lateness.

So I explained to her that if she -- she had better punch out and itwas no good and come back early to work, that's all, otherwise she may be laid off.

Q Did Miss Harrington tell you to tell that to Miss Frazer?

A She told me to tell her about her lateness.

Q Did you ever report Miss Frazer's latenesses to Miss Harrington?

A No.

Q And Miss Harrington was the one who told you to go to

Frazer?

A Yes.

Q And this was without any -- strike that.

Now, doyou know an employee by the name of Terrell?

A Yes.

Q Did you have any knowledge that Miss Terrell was active in her support or was handing out cards for Local 144?

A No, no.

Q Did there ever come a time when you had any incident involving Miss Terrell?

A Just once, yes.

Early -- when she first started, January -- first when she first started working there, it was -- she was working fro ight to four, she came in from seven to eight one morning, but she didn't report to theoffice and when I went up on the floor, she was on -- she was in the dayroom and I asked her, you know, did she report down to theoffice, and she said no.

I asked her if she wanted me to tell -- to go, anywhere she want to do, she told me she don't take orders from me.

Q Now, when you say "the office" --

A I mean the nursing office.

Q The nursing office?

A Yes.

Q And that's where the LPNs --

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A Yes.

Q Now, why is it necessary -- were you ever told why it's necessary for the person on the seven o'clock shift to report --

A Yes, because from seven to eight the nurse that was supposed to come in at that time was to go to a certain floors that Miss Harrington had pointed out for them to go to to be covered.

That would take the morning, I was covering the floor that she was supposed to be on, --

Q All right.

A -- and related to taking care of the patients.

Q All right.

Did you speak to Miss Harrington about that?

A Yes, I did.

Q And what did you tell to Miss Harrington?

A I told her that I had spoken to Terrell about coming to the floor and she said that she didn't take orders from me and I told her than you, and that's all, I walked off the floor.

Q That's what you told Miss HaRRington what happened?

A Yes.

Q Directing your attention to your job and going back to October, November, December, January of '74 and '75, could you explain to us, as the LPN at night, whatyour job entailed?

A Well, we were to cover the house and to check the patients, to see that they're taken care of, to check the orderlies and the aides, to see thatthey do their service relating to the patients.

Q Now, your checking of the aides and orderlies --

A Yes.

Q -- thatwas in relation to their service to the patients?

A Yes.

Q Did you have any authority to repremand an employee?

A No.

Q Did you have any authority to evaluate employees?

A No.

Q Could you assign employees?

A No, they had assignment sheets outside the door because what few were there, they all had special floors they went to.

Q Who scheduled the assignment?

A Mrs. Harrington.

She had a board on the outside for everybody.

Q And the names were listed on the board?

A Yes, the name.

Q Were days of work also listed on the board?

A Yes.

Q Who would be off and who would be on?

A Yes.

Q The floor that they were to work?

A Yes.

Q And Miss Harrington did that?

A Yes.

Q What about then if an employee was ill, could you send thatemployee home?

A I never had an order to do so, so I don't know.

If they were ill, I would call of Miss Harrington first and find out, or they go home on their own.

Q Did you have anything to do with hiring employees?

A No.

Q Could you fire employees?

A No.

Q Could you authorize overtime?

A Authorize -- what do you mean?

Q Could you tell an employee I want you to work overtime on your own?

A No.

Q Could you tell -- could you call in employees who were not on duty?

A Unless I got Miss Harrington's orders first, if someone doesn't show up --

Q What do you do if someone doesn't show up?

A I call Miss Harrington.

Q Does she tell you who to call?

A Yes, because she has a list in her drawer ans she would tell me where to look to pick up to see who would come in at that time.

Q And doyou have any authority to discipline employees.

A No.

I'm only charge nurse, not no supervisor.

MR. COFFEY: Objection, Your Honor.

JUDGE COHN: All right.

Disregard the last statement.

Q (Continuing by Mr. Kaufman) Could you recommend wage increases for employees?

A No.

Q Is that no?

A No.

Q Now, you testified that youhad signed a card for the union and that some other employees had too; is that correct?

A Yes.

Q Where were those cards?

A On the desk.

Q Did you bring those cards in with you?

A Did I bring what?

Q Did you bring them in with you to work that day?

A No.

Q You found them on the desk?

A Yes.

The night nurse, four to twelve nurse, they wereon the desk and she told me here are some cards to be signed by the girls under you or whoever is employed with you and that's all.

Q And that's your knowledge how the cards got there?

A Yes.

MR. KAUFMAN: I have no further questions.

MR. COFFEY: May we have a few minutes, Your Honor?

JUDGE COHN: Yes.

Go ahead.

Not too long.

MR. COFFEY: Okay.

MR. KAUFMAN: Before counsel leaves the room, I think Mr. Pollack has one question.

JUDGE COHN: Mr. Coffey, please come back.

MR. COFFEY: Yes.

JUDGE COHN: All right.

Continue, Mr. Pollack.

CROSS EXAMINATION

Q (By Mr. Pollack) Miss Russell, you indicated that the night nurse told you about the cards thatyou found on the desk.

A The night nurse that I relieved, yes.

Q Could you just tell me her name?

A Well, I think it's Miss Allen.

Q Allen?

A I think that was theone that night that had the cards.

MR. POLLACK: Thank you very much.

JUDGE COHN: All right

Off the record.

(Discussion off the record)

JUDGE COHN; Back on the record.

CROSS EXAMINATION

Q (By Mr. Coffey) Mrs. Russell, what time in the morning was it that you had that conversation with Mrs. Terrell that you testified to?

A It had to be around -- she -- she came in -- it was after seven.

Q How much after?

A Well, at least seven or -- between seven and seven thirty.

Q And she was -- was Mrs. Terrell working at the time?

A No, she wasn't.

She was in the dayroom standing up on the second floor.

Q And is her work station the second floor?

A No, not at that time, I don't think it was.

At that time itwas -- her station is no place at that hour unless it's where Mrs. Harrington wanted her for the one hour, from seven to eight they're supposed to go where Mrs. Harrington wants them at that one hour, from eight to four I don't know where she is stationed.

Q Mrs. Russell, would it surprise you if I told you that Mrs. Terrell never worked on the seven to three shift?

A I don't know.

Y u could tell me anything.

Q To you knowledge, did Mrs. Terrell ever work on the seven to three shift?

A Mrs. Terrell was there -- when she first came, she came seven -- seven to three? No, she worked eight to four, but she come in at seven and worked one hour.

Q She worked an hour from seven to eight?

A From seven to eight, that's it.

Q On whose orders?

A Miss Harrington's.

Q And she worked an extra hour?

A Yes, seven to eight, it's three girls, however she had it, three girls comes in in the morning and works from seven to eight to help the night shift with the patients.

Q And --

A And then they work from eight to three, I think, and

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she gets off an hour early, eight to three.

Q And what was your complaint against Mrs. Terrell at thattime?

A The complaint was that she didn't come down -- she came on duty, she didn't stop at the nursing office, and when I happened to be on the second floor, I found her on the second floor standing up in the -- in the place there, you call it the sitting room, or whatever you call it there for the patients.

Q Now, Mrs. Russell, what was she supposed to stop at the office for?

Yes, well all of them stop at the office to report on duty.

And to find out where they're supposed to go for that hour.

The othertime they have a board that -- they have a board there that they know where they go from eight to four but from seven to eight, one hour, is where Mrs. Harrington would want them to work to help with the patients.

Q Who is she supposed to report to?

A She comes to the charge nurse, whoever the nurse -- charge nurse on the floor would be.

Q That would be you?

A It would be me if I am there, or whoever else is there.

Q Are you the only charge nurse?
A No.
Q On at night?
A No.
Q On --
A On night, yes.
At that time, Yes, I was there at that night and I work five night a week and someone else relieves me.
Q Who works on the twelve to eight shift as charge nurse when you're not there?
A I don't know.
Different ones, whoever comes.
Q Did Mrs. Link ever work as the charge nurse when you weren't there?
A Yes.
Q Now, you say you got the -- the authorization that you gave out to the other employees from Mrs. Allen.
Was she the charge nurse?
MR. KAUFMAN: Objection.
A I didn't give --
JUDGE COHN: Hold it.
When you have an objection, hold it.
MR. KAUFMAN: I don't believe that was the witness' testimony in that regard.

JUDGE COHN: Yes, I'll sustain that objection.

Q You say you got some authorization cards for Local 531 from Mrs. Allen?

MR. POLLACK: Objection.

MR. KAUFMAN: Objection.

That still wasn't the witness' testimony.

JUDGE COHN: Sustained.

She didn't say it that way.

Q (Continuing by Mr. Coffey) How did you get the Local 531 authorization cards?

A I didn't get them.

They were on the desk and when Miss Allen came in, we both get reports, she said there are some cards on the desk for the union, give them to theones that come in, have them sign and leave it.

Q Did she say who told her to --

A No, she didn't.

Q -- give them to you?

A No, she didn't.

Q Did she say who were you supposed to leave them for?

A She only told me that there was the cards, when they sign them, whoever comes in, sign them, leave them there on the desk and that's what we did.

Whoever signed the card, it wason the desk for whoever

picked them up the next morning.

Q Did she say who was going to pick them up the next morning?

A No.

Q Isn't it true that she told you that Mrs. Harrington had left them for employees --

A No.

Q -- to sign?

A No, it is not true.

Q Isn't it true that you told me that?

A I told you what?

Q That Mrs. Harrington --

A I did not.

Q -- Mrs. Harrington --

JUDGE COHN: Hold it.

MR. KAUFMAN: Objection, that's argumentative and is not a proper question, what she may have told, Mr. Coffey. Unless he has an affidavit.

JUDGE COHN: Overruled.

Now wait a minute.

What are you referring to when you say "isn't it true that she told you -- in a conversation?

MR. COFFEY: We had a conversation.

JUDGE COHN: Is there a statement involved here?

MR. COFFEY: No, the witness refused to give a

statement.

MR. KAUFMAN: I object.

JUDGE COHN: Well, I will sustain the objection as to form.

Now, if you want -- if you want to lay some foundation, go ahead.

Q (Continuing by Mr. Coffey) Mrs. Russell, did I not come to your house one day?

A Yes, you did.

Q And did we not have a conversation?

A Oh, yes, we did.

Q And didyou not at that time tell me that Mrs. Harrington had left the cards for the employees to sign?

A I did not.

You told me and I told you that Miss Harrington did not leave no cards, that the cards were on the desk, in fact, I told you there were many cards.

I said there are many union cards -- people came there and we all got cards and I said I don't know how many I signed, but I signed plenty cards.

Q When you wanted Mrs. Frazer about her lateness, what were your words to her?

A I told Mrs. Frazer that to please try to be early, on the job because punctuality is something that Mrs. Harrington always yell at me about, and would she please

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try to come in early.

The last time she was late, I think I told her, I said Mrs. Frazer, to please try and come in early because something may happen.

Q Now, do you transfer -- do you transmit information from Mrs. Harrington to the employees often such as that?

A Well, if she gives me information to give them, yes.

Q How often do you do that?

A Well, as many times as she gives me the information t o do it.

Q Do you do it on a daily basis?

A What .

Q Do you do that on a daily basis?

A Daily basis?

Q Yes.

A Well, if she should leave an order or something for me to give something or tell somebody, yes, I do.

Q Now, do you give out paychecks to employees?

A Well, if this ask for paychecks and I go in there to get my own, I get theirs too because it's locked up in the closet and I'm the one who have the key.

Q Youhave the key to the closet where thepay checks are kept?

A Yes.

Q Are there any other nurses on duty when you're on d uty?

A At that time, no.

Q Are there other nurses on duty when you're on duty now?

A Yes.

Q But you're the only charge nurse on duty?

A No.

Q That's twelve to eight?

A No.

They have -- what is it -- supervisors, nurses and nurses and nurses, LPNs, RNs.

Q Prior to January 15th, 1975, Mrs. Russell, were you the only nurse on duty between twelve to eight?

MR. POLLACK: Asked ans answered, Your Honor.

JUDGE COHN: Overruled.

Do you know the answer to that?

THE WITNESS: What's that?

JUDGE COHN: Did you get the question?

THE WITNESS: Was any more nurses on --

Q (Continuing by Mr. Coffey) -- between twelve to eight?

A Twelve to eight?

Q In the morning, in the period prior to --

A After January the 12th?

Q Before January 15th.

JUDGE COHN: Before January 12th was there anybody, any other nurse on the 12 to eight, other than you?

THE WITNESS: I don't recall. I don't recall. I don't recall.

I don't know -- the dates, I don't know -- I don't know -- I don't recall.

I can't recall. I really don't know.

Q (Continuing by Mr. Coffey) When you did begin working at River Manor?

A August the -- well, the night the place opened, August something.

Q Now, when was the first time you can recall that a nother charge nurse was on with you at the same time you were on the twelve to eight shift?

A I don't recall.

Q Was it prior to March?

A I don't recall now who -- I don't know when there was another nurse.

It had to be after they opened another floor or something.

I don't recall. Really, I don't recall.

Q Now, Mrs. Russell, could you change the floor assignment of an orderly if you needed him on another floor or an aide?

A Yes, I did at times. I had to. Miss Harrington told me to.

Q Now, if you saw an employee wasn't working, what would you do?

A I don't know.

I haven't seen one that wasn't working so I don't know what I would have done because all the employees worked.

Q When employees come in at night at twelve o'clock, what do youdo?

A They come in, they look at their assignment, and they pick up the keys and they go up to thefloor, the keys are rightonthe desk.

Q Whwere are yousitting when they come in?

A I could be sitting in any chair, in the staff room, any place.

Q In the staff room?

A Yes, inthe staff room, that's where they have to go to pick up the keys, outside of the staffroom door is where the assignments are.

Q Do you tell them where to go?

A I don't have to, I keep telling you they have assignments.

Q Do you ever do it anyway?

A They have assignments, outside Mrs. Harrington has

the name of employees and what floor they should go to.

The pick up the keys and I tell them these are the keys, they pick them up.

I tell you what they do.

Q Besides picking up their keys, what purpose is it they come to the staffroom for at the beginning of their shift?

A Well, they usually come in after they once sign in, they come in, so let us know they are there.

Q Let who know?

A Let me know or whoever else is in charge know that they are there.

That's the only way we know, if they come and go upstairs, we won't know who is on the floor, if the floor is covered.

Q If you saw an employee such as an orderly or aide making a mistake, what would youdo?

A I don't know.

MR. KAUFMAN: Objection.

MR. POLLACK: Objection.

A I don't know.

JUDGE COHN: Hold it.

THE WITNESS: Yes, sir.

JUDGE COHN: I think you're -- I'm going to sustain the objection.

an employee in the working area?

A No.

Q You never found an employee outside the working area?

MR. POLLACK: Objection.

That's a different question.

JUDGE COHN: What do you mean by "outside the working area" -- you never found -- you mean never found an employee who was outside where he was supposed to be?

MR. COFFEY: Right.

JUDGE COHN: Or was not where he was supposed to be?

MR. COFFEY: Right.

JUDGE COHN: Did you ever find somebody who wasn't where they were supposed to be at the time?

THE WITNESS: No, they were where ever they work.

JUDGE COHN: Everybody works where?

THE WITNESS: Where they're supposed to be.

Q (Continuing by Mr. Coffey) How about when you found Mrs. Torrell, was she where she was supposed to be?

A Well, that's the only one.

Q So that's one?

A Yes.

Well, that's theone, if you want to put it that way, yes.

Q What happened -- did you direct her to go to her working

area at that time?

A No.

Q Did you ever have occasion to call an ambulance to come to the home?

A If it was so -- if I had to, butno.

Q You never did?

A No, I didn't have to.

If I had to, I would call Miss Harrington and she would instruct me what to do or Mr. Rosen.

JUDGE COHN: Or what?

A You mean, have I ever had to call an ambulance?

Q Yes.

A Yes.

Q You did?

A Yes, but I had orders from Mrs. Harrington or Doctor Rosen.

MR. KAUFMAN: Doctor who is that?

THE WITNESS: Rosner, Rosen or Rosner.

The doctor who was on staff. I forget his name.

JUDGE COHN: All right.

A doctor?

THE WITNESS: Yes.

JUDGE COHN: Either Mrs. Harrington or the staff doctor, right?

THE WITNESS: Yes.

Q (Continuing by Mr. Coffey) You called the ambulance?

A Yes, I would call the ambulance then, I would call -- I would call her and she told me, yes, oh yes.

Q Did that happen more than once that you called an ambulance?

A Yes. I think it did.

Q How many times did you call an ambulance?

A I don't know.

I can't tell you how many times I called an ambulance.

Q Do you know why Mrs. Harrington or Doctor Rosner didn't call the ambulance, why it was left to you?

A Well, because if they would ask me for the vital signs of a patient and then he would in turn -- he said, "Well, I will get in touch with the hospital, andyou in turn call the ambulance there and send them to the hospital," he -- because they had the -- they had I think the Brookdale Hospital.

Q Did you ever call the ambulance without talking to --

A No, I didn't have to.

I always got orders from Mrs. Harrington what to do.

Q If there is an emergency in the home or something goes wrong, who do theorderlies and aides report to?

MR. KAUFMAN: Objection.

MR. POLLACK: Objection.

JUDGE COHN: Overruled.

MR. KAUFMAN: Your Honor, this is -- I'm objecting because it's misleading.

We don't know if it's patient-related or any other type of emergency and I think the question should at least be broken down so the witness can answer.

JUDGE COHN: She's been talking about patients up to now.

I assume that's what it was.

MR. POLLACK: Could the witness limit her answer to that.

THE WITNESS: Repleat it, please.

JUDGE COHN: Let me ask you a question.

Let's suppose an orderly or an aide spots a patient, you know, who is in trouble, some sort of medical emergency.

THE WITNESS: Yes.

(Continued on following page)

1e-1

BY JUDGE COHN:

Q What does the orderly do?

A Call the charge nurse.

Q That's you.

A Well, if I am on, yes.

Q You go and see what the score is?

A I would go up and see what, I take the vital signs, if I see it necessary I go back down stairs and I call Mrs. Harrington and tell her what it is and if she said call Dr. Rosner -- whatever is his name, I can't recall.

Q Anyway --

A Either one of them.

I explain the vital signs and he suggests them to go to the hospital.

Q Other than the doctor, is Harrington the only one you deal with?

A When Mrs. Harrington is the supervisor she is the only one I talk orders from.

Q She is not working there while you were there?

A No.

I have her telephone number. I can call at any time I want to.

Her instructions are to call her -- to call her at any hour of the day or night.

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Q You were out?

A Yes.

Q When you came back the home had instituted a practice of having a supervisor on at night?

A When I got back they had somebody else.

Q Did you sit in the staff room at that time --

A When I was there yes, when on the first floor, yes.

Q Did you ever go in the second floor staff room?

A Yes, I go to the four first -- the fourth floor, first second third and forth.

Q What do you do if the second floor -- what do you do in the second floor staff room?

A I look at the charts and I count my medications, that's all, give out what medication I have to give out in the morning.

Q Can you tell me when did you have these cards left for you by Mrs. Allen?

A I don't know.

Sometime in January or December. I don't know.

Thm olny thing I knew when the union started standing around there giving everybody cards.

That's when it was.

I don't know when.

Q Can you give us in detail what happened?

When did you first see the cards?

MR. KAUFMAN: On that particular night.

Are you talking about any cards or that night?

MR. COFFEE: That night.

A I guess that night.

Q Where were they?

A On the desk.

Q Who was present?

A I don't know, just who were on duty that night. I don't know.

Q Where was the desk?

A The nurse's desk on the first floor in the staff room, where they keep books and everything.

Q About what time of night?

A Well, ithad to be 12 or after 12 because we come on duty at 12.

Q Now, who were there that night?

A I don't remember.

Q When did you first see Mrs. Allen that night? What was she doing?

A Standing up giving me the report when I come in there.

Q What was her rport that night?

A I musttel l her of patients, she told me. I can't recall the names.

Q What did she say --

A Specify the cards, that's what you want me to say?

Q I want --

A All right.

She said here is cards -- here is cards for the union.

Have the girls and boys to sign it, that's the words we usualy use, that's all, on the night shift.

And then leave them for them, that's all, that's the words we used.

Q What did she say aboutleaving them?

A Just leave them on the desk.

Q What did you do?

A I left them on the desk.

Except the one that I had.

And I told the girls and boys who come on, say, here are the cards, your union card-- I didn't say girls and boys.

I said, here is your union card, sign them if you want, and if you don't it makes no difference. That's the words I used.

Q What happened then?

A In fact, I cursed.

They picked up the cards andI guess they signed,

but who it was I don't know.

Q Anybody ask any questions about the cards?

A No.

We had a conversation about the union, something about Teamsters union, the 531 people.

Q What did the employees say to you and what did you say to them?

A They didn't say to me.

They was jujt talking about, that's all, about the union.

531 wasn't a union that here they would want because it was a Teamsters union and it had chauffeurs or something, it didn't have anything to do with a hospital.

Q Was this a number of employees or just one said that?

A I don't know who it was. Maybe I did too. I don't know.

Q Now, a number of employees said they didn't want to sign the cards?

A They didn't say. They just -- they didn't care for the union but they still signed the card.

Q When they did say they didn't care for the union, what did you say to them?

A I told them I didn't give a damn if they signed it or not.

Q Did they say anythng else to you?

A Nobody said anything else to me.

We had to do our work.

Whoever signed the card put it on the desk.

I put mine there and whoever came in the next morning I told them there was the cards. That's all.

Q Who came in next mordning?

A I don't know. I don't remember.

Q You turned them over to another LPN?

A Iguess so. Whoever was on.

I don't know.

Q It couldhave been an RN --

A It could have been.

I don't know who was there, sir.

Q It could have been Mrs. Mercado or --

Q Mercado?

A Yes.

Q She is a charge nurse on the day shift?

A She wer

Q But it ould have been an RN?

A I don't recall.

Q But it may have been an RN?

A No.

MR. KAUFMAN: Objection.

A Don't put words in my mouth, sir, please.

JUDGE COHN: She answeres she didn't know.

MR. COFFEY: Right.

Q How many registered nurses do you have working at the home at that time?

A I don't know and I don't recall.

Q Do you know the names of any registered nurses?

A No.

Q Is Mrs. Harrington a registered nurse?

A Yes.

Q Do you know the name of any other supervisor?

Do you know the name of any other RN?

A She is a supervisor.

Q Do you know the names of any other RN?

A No.

Q What did you say to the person you gave the cards to in the morning?

A I didn't give no cards to no one.

I told you they was on the desk.

Q What did you say to the person who came on in the morning?

A I only said there are the cards, the union cards, that's all.

I point to the cards, mine was included there.

Q And the person you gave it to, did they say anything?

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A I didn't give nobody no cards.

Q The person you pointed the cards out to.

A I don't know.

Q Did she say anything to you?

A Not regarding the cards.

We spoke about the patients, the report for the patients, that's all.

Q When was it you spoke to Miss Frazer about her latenesses?

A Oh, boy, sometime in January. I don't know.

Q Could it have been December?

A I don't know.

Q You spoke to her more than once?

A Yes.

Q How many times?

A I don't know.

Q What did you say to Miss Frazer the first time you spoke to her about lateness?

A I spoke to her about trying tobe on time, that's all.

The second time I said Mrs. Harrington said, please try to be on time.

Punctuality is the one thing she hates and she's bugging me about it, that's all, please try to be on time.

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That's the last time that happened. I don't know anything else.

Q Did Mrs. Harrington tell you to speak to her two times?

A No -- yes, she was late several times, so yes, Mrs. Harrington asked me to please ask her to be more punctual and on time.

Q Can you recall if it was before or after Christmas that Mrs. Harrington asked you for the first time to talk to Frazer --

Q Itwas before Christmas.

I think one time,and then after Christmas the next time, I think, something like that.

Q What did Mrs. Harrington say to you the first time s he asked you to speak to Frazer?

A She looks at thetimetable because she come back to the office and she asked me to please tell Miss Frazer to be on time.

Punctuality is something she don't like, lateness, and that's what I told Miss Frazer.

Q When was this?

A Sometime in December.

Q How long after that did Mrs. Harrington speak to you again about Miss Frazer?

A It must have been after the holidays.

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A I don't know what date.

Q Did you speak to Miss Frazer a second time?

A Yes.

Q Where were you then?

A Maybe in the staff room.

I don't know just where.

Q Where did you speak to her the first time?

A Maybe in the staff room.

I don't know.

Q Didyou call her to the staff room?

A No.

When she came in late she came to the staff room.

Q Did Mrs. Harrington ever ask you to distribute health and welfare cards for Local 531 to the employees?

MR. KAUFMAN: Can we have a date on this?

MR. COFFEY: At any time.

A Mrs. Harrington never asked me to distribute any kind of cards.

When I come in at 11 at night, I don't see Mrs. Harrington.

Q This is General -- party in interest 12.

This is a sick and welfare card for Local 531.

Did you ever see one of these?

Q Never saw one?

A I don't remember that.

MR. KAUFMAN: I am going to object to the line of questioning.

I don't know whether counsel is showing the witness the card just as a general type of card or the card is --

JUDGE COHN: He is showing her a card.

Come on.

A I can't remember that.

It could be.

Q Did you ever give any cards like this out to the employees?

A I didn't give no cards to nobody.

Q Are you still working for River Manor?

A Yes.

Q Are you still working at the same salary you made in January?

MR. KAUFMAN: Objection.

JUDGE COHN: Overruled.

Q Did you get any increases since --

A I don't know.

Q -- January?

A I don't know. I forgot what I was making then.

I have to go home and look at my stubs and I can

tell you.

I don't know really.

Q How much were you making when you were hired at River Manor?

A 190.

Q 190?

A Yes.

Q A week?

A Yes. I think it was 190. I am not sure.

Q Are you making 190 now?

A What am I making now?

A Yes.

A It must be 200. Yes, maybe that's it.

Yes, that's it.

Q You got a $10 increase?

A Yes. I mean that's it.

Q When did you get the increase?

A Oh, I don't know. I don't remember.

Q Did you ever speak to Mr. Hazell about his lateness?

A No.

Q Did you ever speak to other employees about lateness besides Mrs. Frazer?

A No.

I only think -- the only time I spoke to anybody is when Mrs. Harrington asked me to and I remember Mrs.

Frazer but I don't remember anyone else.

Q Did Mrs. Harrington ever ask you to speak to the whole night shift about lateness?

A No.

Q You never had a general meeting about lateness?

A I had no meeting of no kind.

Q What did you consider tobe late?

MR. KAUFMAN: Objection.

MR. POLLACK: Objection.

A I have nothing to do with that, sir.

JUDGE COHN: Let the answer stand.

Q Isn't it true employees were often late on the night shift?

A It -- if it was it didn't concern me because they sign outside.

They wasn 't my employees.

Q Didn't they report to you when they came in?

A They come into the office where the keys was. They pick up the keys and go to their floors.

Q Wasn't part of the reason they reported to you to tell you they were there?

A I presume it was.

I was the charge nurse. They had to report to somebody.

Q And you were the only nurse there?

A Yes, that certain time, yes.

For awhile I was the only nurse there.

But I don't know how long it were before another nurse came.

Q When you warned Mrs. Frazer for the last time about her lateness were you still the only nurse on duty?

A I don't know.

I know they got another nurse in when the floors began to fill up, like patients coming in.

Then they got another nurse but just when thatwas I can't tell you.

Q When you warned Mrs. Terrell --

AOh, boy, here we go again.

Q -- were you the only charge nurse?

MR. KAUFMAN: Objection.

There's been no testimony this witness ever warned Mrs. Terrell.

JUDGE COHN: Well, not in terms of warning. Go ahead.

I will sustain the objection as to form.

Go ahead.

Q When you had the converstion with Mrs. Terrell when she told you she didn't have to obey you --

A She didn't tell m,e nothing like that.

Q What did she say to you?

A She said, I don't have to take orders from you. That was all.

Not other -- no other words was said.

I said thank you and walked away.

Q Did Mrs. Terrell ever -- did she have to take orders from you?

A I don't guess she was not supposed to take orders from me.

She was only supposed to come down there and be assigned to whatever floor Mrs. Harrington wants her on.

JUDGE COHN: Off the record.

(Discussion off the record.)

JUDGE COHN: Back on the record.

MR. COFFEY: We would like to -- general counsel would like to read -- can we go off the record?

JUDGE COHN: Off the record.

(Discussion off the record.)

JUDGE COHN: Back on the record.

JUDGE COHN: During the off-the-record colloquy some question arose as to the hours or time of day that employee Terrell worked.

Mr. Coffey will now read into the record from the employer's time record book in which employees wrote the time they reported in and they also wrote in

Any objection?

MR. KAUFMAN: No objection.

JUDGE COHN: 22A through VV is received.

(General Counsel's Exhibits 22A through VV for identification was received in evidence.)

JUDGE COHN: All right, proceed.

BY MR. COFFEY:

Q When you gave out the 531 cards --

MR. POLLACK: Objection.

JUDGE COHN: Sustained.

Q When you directed theemployees' attention to the Local 531 cards that you -- that were on your desk, did you ever hold the cards in your hand?

A Yes.

I picked mine.

Q Did you ever pick anybody else's card up?

A No.

Q Now, can you recall the name of any employee who was presen at that time?

A No.

Q Did everybody who was on duty that night sign a card?

A I presume so.

When they signed the cards they put it on the desk.

So if they signed or put it back blank, I don't know.

I didn't look -- I didn'tread them.

I only signed mine.

Q You say you signed cards for other unions?

A Yes.

There were others out there in the street when I walked in the door.

They were giving me cards and telling me sign the cards for different unions.

Q Anybody offer you any cards from another union while you were in the home?

A Yes.

Q Who?

A Somebody outside, 13 something hand me a card, and other people cards too.

I don't think nobody signed any.

Q Did any employee ever give you a card to sign for any union?

A No.

Q Nobody ever asked you to sign any card for any union?

A Yes.

Q No employee ever asked you tosign a card for --

A Yes. Mr.. Hazell.

Q When was that?

A I don't know.

During the time he was bringing cards around for 144, 140 -- whatever it is, 144.

Q What did he say to you?

A Asked me if I want to sign a Local 144 card.

I told him no.

I had signed enough cards and no more cards.

Q Where was this?

A Where was what?

A That Mr. Hazel asked you to sign for Local 144.

A I don't know where it was in the nursing home that he asked me.

I don't know.

Q Was that the first time you knew that Mr. Hazel was giving out cards for Local 144?

A That's when I found out he was giving cards.

Q How long before his discharge was this?

A I don't know.

I know when when he asked me to sign and I don't know when he was discharged.

Q When he gave you the card was Mrs. Frazer with him?

A Mr. Hzel didn't give me no card.

Q When he asked you to sign.

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JUDGE COHN: Overruled.

What did Miss Mercado do with the cards?

THE WITNESS: I don't know, sir.

I don't know if it's Miss Mercado. I don't directly say it was her.

I only told him it was a nurse. We have seven nurses coming on in the morning.

I don't know who itwas that morning.

JUDGE COHN: You remember Mrs. Allen was the one that preceded you that day?

THE WITNESS: Yes.

JUDGE COHN: You don't recall who came after?

THE WITNESS: I don't remember.

JUDGE COHN: All right.

Q Did the person you left the cards for in the morning say anything to you about what was going to be done with them?

A No,we didn't talk about it.

Q Did you ever have any subsequent conversations with Mrs. Allen concerning the cards?

A No.

Q How about thereafter?

A No.

Q The next night?

A I don't remember.

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MR. KAUFMAN: Objection.

Outside the scope of direct.

A Oh, brother.

JUDGE COHN: Overruled.

Q What?

A Who give me the card?

JUDGE COHN: Yes, the pink one.

A Those card were right there on the desk. When I came on in the evening, these cards were placed on the desk.

I don't know if -- whoever is on duty from 4 to 12, they placed the cards on the desk for when one of us come in, whoever comes in, they point to the cards because something about the union was coming in and so they placed it -- they said, here is the card, here it was I picked up one, I think it's a double card, one of them I keep and one I turn in.

Now, who I gave thatto I don't know.

I don't know who the night nurse was.

Q Who gave you those cards?

A Nobody gave them to me.

Q Was it more than one --

A There was a few.

Q For the people on the shift?

A For the staff, whoever is on the night staff.

Q Was the person who gave you the card that is similar to GC-3 --

MR. KAUFMAN: Objection.

The witness testified she doesn't know --

MR. COFFEY: I didn't finish my question.

JUDGE COHN: I know, but I think he's right in objecting to it.

MR. COFFEY: Apparently she had some conversation with whoever it was who left the card.

JUDGE COHN: She testified to that.

A The white cards, yes --

JUDGE COHN: She is talking about the check-off cards.

MR. COFFEY: Right.

JUDGE COHN: Which she subsequently signed for Local 531.

She testified that she came in one night and found them laying on the desk.

Q Did you alsotestify that someone asked you to pass out some of these cards to other employees on the staff?

A No. I didn't have to passthem out.

When I come in the cards were there on the desk.

Q Yes.

Did you have a conversation with someone about

those cards?

A No.

Q You just filled --

A I was told by the nurse, whoever was on, that these was for the union, that we suppose to sign them, the same way like with the white cards.

But I don't know what nurse it was.

Q You mean it was the nurse that was on the shift before yours?

A Yes, from 4 to 12.

Q The charge nurse?

A Well, yes.

Q 4 to 12?

A Yes.

Q When you signed your car that resembled GC-3, there were also cards with them of the same kind were there not?

A Other cards like the one I signed?

Q Yes.

A There was some more down there. I didn't count them.

Q When employees came on your shift, the 12 to 8 shift, did you direct their attention to these cards?

A Yes.

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A There is the union cards.

Q What else did you say?

A There is union cards, so they know what it means to sign them.

Q Did you tell them to sign?

A No.

Sign if you want to, that's the words I used, sign if you want to.

I signed mine.

MR. POLLACK: Your Honor, I think by counsel and yourself using the term check-off card it is meaningful to all of us and I believe to the witness and I believe Mr. Kaufman's objection may have been well taken.

I don't know that the witness has in mind -- the proper card.

MR. KAUFMAN: The only reference made to the witness was No. 3.

JUDGE COHN: You are talking about the pink card now?

THE WITNESS: Yes.

JUDGE COHN: All right.

I think the witness understands very well.

Q All the employees signed them?

A I don't know.

I didn't have time to go through no cards.

That wasn't my job to go through them.

They put them down, there's where they stayed.

I may have put them together and put them on the side but I didn't go through to see who signed them.

Q Who did you give those cards to?

A To nobody. They were left on the desk.

Q Did you tell anybody about the next morning?

A The next morning I gave my report, whoever came on, I said there's the union cards and I gave my report, that's all.

I don't talk about nothing I don't know about.

MR. COFFEY: Objection.

This is not responsive.

JUDGE COHN: You asked these kinds of questions, now she's giving you the story.

MR. COFFEY: Okay.

Q On the night you gave out or you directed the attention of the employees tothese cards like GC-3 --

MR. KAUFMAN: Again, can we identify what GC-3 is?

JUDGE COHN: She doesn't know GC-3 from GC-99.

Pick it up and show it to her.

MR. POLLACK: Put in -- put it in so we can have a point of reference, Mr. Coffey.

Q I direct your attention to REspondent's Exhibit 6 for identification.

Is that the card you signed?

A That's mine,yes.

Q And you signed this card?

A Yes.

Q And you dated it?

A Yes, that's the date.

MR. KAUFMAN: Can we have the date?

MR. COFFEY: 1-17-75.

Q Was that all a pay day, do you recall?

A Oh, brother, I don't know.

Q Did you give out checks at the same time?

A I don't remember.

Q What day is payday?

A Every Thursday.

Q On the 12 to 8 shift would that mean it would be actually Friday morning?

A Yes.

Q All right.

MR. COFFEY: Would your Honor take judicial notice that January 17th is a payday.

MR. KAUFMAN: I don't think that is a basis for judicial notice.

MR. COFFEY: It was a Friday I meant.

JUDGE OOHN: I am not going to take judicial

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notice.

Q Was your normal practice to give out paychecks on Friday?

A Yes, at times.

At times I did.

Q Did you give out the paychecks before they signed these cards or after or at the same time?

A I don't remember. I don't know. I don't remember. I don'tknow.

MR. KAUFMAN: At this point I want to renew my objection that counsel is so far outside the scope of my direct examination.

JUDGE COHN: Yes.

What are we doing with this business of card signing on January 17th which is a month or more after the recognition.

I meann, don't we have enough on this?

MR. COFFEY: We have allegations that the check-off was made illegally, your Honor.

JUDGE COHN: You have allegations that they have -- they didn't legally check-off dues, they will -- they --

MR. COFFEY: They illegally caused people to check off authorization.

JUDGE COHN: Okay.

I think you pretty well exhausted it anyway,

because she has given the same story with relation to the pink check-off cards as with the other cards.

Let's geton with this.

MR. COFFEY: General Counsel offers GC -- Respondent's 6 into evidence.

MR. POLLACK: No objection.

6-Y.

JUDGE COHN: 6-Y is one of those that have been identified as -- all right, we will accept it as Respondent's 6-Y.

MR. KAUFMAN: No objection.

JUDGE COHN: It is received.

(Respondent's Exhibit 6-Y was received in evidence.)

Q How many orderlies and aides worked on your shift in November and December of 1974?

A I can't recall.

MR. COFFEY: No further questions, your Honor.

MR. CANTORE: I have a few.

BY MR. CANTORE:

Q These other cards which you signed, where did you get them other than 531?

A From outside.

Q They were never left on the desk for you to sign?

A No.

These was people on the outside that they said they were from different sorts of union, as you come in the door.

I mean, they had nothing to do with theinside, the nursing home.

You sit in the card and he was leaning out and he hand you a card, that's all.

Q And outside of Terrell you never had any problems with any employees there?

A No.

Q Did you ever have occasion to have any trouble with Miss Brown?

A Who is Miss Brown?

There's two or three Brosns there.

Q Did you have any trouble with anyone named Brown?

A Not that I know of.

MR. CANTORE: I have no further questions.

REDIRECT EXAMINATION

BY MR. KAUFMAN:

Q During your cross-examination you testified concerning the number of aides who worked on the 12 to 8 shift.

A Yes.

Q You didn't know the number?

A I didn't. I am not sure. I don't know.

Q In November and December on a given night, do you know how many aides would be assigned to the first floor?

A One.

Q And the second floor?

A I think it' s two.

Q And the third floor?

A One.

Q And on the fourth?

A One or two.

I am not sure.

Q That would be on a nightly basis?

A Yes.

Q The home, River manor, runs seven days a week, is that correct?

A Yes.

Q So that would it be fair for me to say there would be people rotating in and out in order to keep the shifts manned?

A Rotating?

Q Rotating days?

A Yes.

Q So it is a seven-day operation?

A Yes.

Q When you testified to Mr. Coffey's question were you referring to the total number of people on the 12 to 8 rather than on a given night?

A I didn't give him no number because I don't know how many.

Q As to the individual on a particular night by floor that you know?

A Yes.

Q You have just told us that --

A Seven, yes.

Q All right.

MR. KAUFMAN: I have no further questions.

MR. POLLACK: Nothing else.

MR. COFFEY: No further questions.

JUDGE COHN: Let me ask a question or two.

BY JUDGE COHN:

Q Going back to the original cards --

A Yes.

Q -- the whiteunion membership cards.

A Yes.

Q These are the cards that were left you by Mrs. Allen?

A Yes.

Q Or they were left on the desk?

A On the desk, yes.

CSA Reporting

Q She mentioned them to you?

A Yes.

Q They were union cards for people to sign?

A Yes.

Q And you told this to the people who were working?

A On the staff at night, yes.

Q I know you said you don't recall who they were. Do you have any idea how many it wouldhave been?

A Well; one for the first floor, Mrs. Reeves, second floor was two, third floor was one and I guess the fourth floor was two, if they call came in that night. About seven.

Q Okay.

Now, you told them -- whatdid you tell them?

A When they came in, they came in, they all didn't come in together and then when they come in I would say here is the union cards, you can gisn them if you want to --

Q You mean as each came in?

A Yes.

Q You never called them in a group?

A No.

Q There was some discussion about this among these people?

A Yes.

Q About the Teamsters?

A Yes.

Q And a lot of them were saying or some of them were saying --

A Majority were saying.

Q -- that the Teamsters was a truck driver's outfit?

A Yes.

And we had a pamphlet and that's why they were talking -- then we seen the thing about the hospital.

Q You said do whatever you want?

A Yes.

Q You even said, I don't give a damn what you do?

A That's what I said.

Q You picked up a card for yourself?

A Yes.

Q You signed it?

A Yes.

Q You put it back on the desk?

A Yes.

Q How about the others?

A I asked them, when you all finished sign them and put them on the desk.

Q Did you see any of them sign them?

A Truthfully one or two in there but who they were, I don't remember.

Q And you said -- I think you used the word that you presumed that all these employees signed?

A I did, yes.

Q How would you come to presume this?

A I meant the night shift.

Q I am talking about the night shift.

A Because they told me they did.

Q They told you --

A Yes. I asked them did you sign, they said yes.

Q At some time or other you went back to them and asked them if they signed?

A I asked them if they signed and they said --

Q All you asked them if they signed?

A That's all.

Q And this was after all these people had said something about, you know, that the Teamsters didn't seem to be the type of union that should represent --

A Yes.

Q Nursing home employees.

A Yes.

Q Okay.

JUDGE COHN: Anything further?

MR. COFFEY: I may have just a few questions, your Honor.

JUDGE COHN: I am not going to let you start a new

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thing.

In fact, I am going to restrict you to whatever I asked her about.

If anybody has any question concerning the matters that I just covered, they can do it.

Otherwise, you hold your peace

BY MR. COFFEY:

Q How long after the people picked up the cards did you go back to them and ask them if they had signed them?

A In the morning when I went to the other floors I asked them did they sign the cards, that's all.

Q You went to each employee?

A No.

Just who I would pass, that's all.

Q Did any of them respond?

A I don't know whether they did or not.

JUDGE COHN: Didn't they haveto respond because you said --

THE WITNESS: Some shake their headsand walk on.

Some told me. Some might have. I said some of them did answer.

Q Did some of them say no?

A No.

CSA Reporting

Q Did anhone still claim they didn't like the Teamsters Union at that time?

A No.

Q And in the morning how many cards --

A I didn't count them, sir.

MR. COFFEY: No further questions.

MR. POLLACK: Nothing.

MR. KAUFMAN: Nothing.

JUDGE COHN: Thank you.

You are excused.

(Witness excused.)

JUDGE COHN: Let's take a break until quarter to.

(Recess taken at 3:35 p.m.)

(continued on next page.)

JUDGE COHN: Back on the record.

Raise your right hand.

Whereupon,

ELSIE HARRINGTON,

was duly sworn in the Judge Cohn, was examined and testified as follows:

MR. KAUFMAN: Your Honor, I'm going to have to ask Mr. Ostreicher to move.

I think I should point out that I think Miss Harrington has a hearing problem.

THE WITNESS: Yes.

MR. KAUFMAN: And therefore all questions should be directed directly to her so that she could see the movement of the mouth.

JUDGE COHN: Yes, of course.

DIRECT EXAMINATION

Q (By Mr. Kaufman) Would you state your name?

A Elsie Harrington.

Q Could you please talk up?

A Elsie Harrington.

Q And by whom are you employed?

A River Manor.

Q And between September and February -- September, 1974, and February of 1975, in what capacity wereyou employed

A Director of nurses.

JUDGE COHN: What was that?

MR. KAUFMAN: Director of Nurses.

JUDGE COHN: Director.

Q As director of nurses, could you tell us what your duties consisted of?

A Patient care, employment, book work, mainly to see that the patients were taken care of properly.

Q Areyou responsible for the nursing department?

A Yes.

Q And does that include the nurses, aides and orderlies.

A Yes.

Q Now, could you tell us during that period of time when I've already mentioned, September to February, '74, '75, who prepared the schedules forthe employees in terms of who -- who listed the schedules as to when they would be working and not working?

A I did.

Q You did?

A Yes.

Q And who assigned them their floors?

A I did.

MR. KAUFMAN: Would youmark this, please.

(Whereupon, Respondent's Exhibit Seven, was marked for identification.)

Q (Continuing by Mr. Kaufman) Miss Harrington, I show you this document marked Respondent's Exhibit Seven, for identification, and I ask you if you can identify that forus.

A This is the time sheet --

Q Speak up.

A This is the time sheet for November.

Q And?

A From the 10th to the 23rd.

Q November 10th through the 23rd?

A Yes.

Q Is that what you prepare?

A Yes.

Q And tell us what you put on that sheet.

A All the employees in the nursing office, in the nursing department, with their time on and off, you know, the days they work and the days they're off.

Q And do you also put on the floor which they will be working on?

A Not on this sheet.

These are permanent records. I posted one on the bulletin board for the employees which after the two weeks, you know, after the two weeks are up, I just threw them out because these are kept for the office.

Q You make a photocopy ofthis?

A Sometimes a photo, sometimes I did it myself.

Q You redo it again?

A Yes.

Q The same type of sheet?

A Yes.

Q On this you put on the floor they're going to be working?

A Yes.

Q Is that posted for employees?

A Yes, posted on the bulletin board.

Q And how often is this sheet prepared?

A Every two weeks.

Q So it's run for a two-week period?

A Yes.

Q And all of these sheets are prepared by you?

A Yes.

Q And this is for the nurses and employees on all shifts?

A Yes.

MR. KAUFMAN: I offer it.

MR. CANTORE: May we see it, please?

MR. KAUFMAN: Yes.

MR. POLLACK: No objection.

JUDGE COHN: Any objection to Respondent's Exhibit Seven, Mr. Coffey?

MR. COFFEY: No.

JUDGE COHN: Mr. Cantore?

MR. CANTORE: No objection.

JUDGE COHN: Okay.

Respondent's Exhibit Seven is received.

(Whereupon, Respondent's Exhibit Seven was marked received)

Q (Continuing by Mr. Kaufman) Now, is this the same type of schedule sheet that youprepared for the period September through February, let's say, the same period?

A Yes.

Q You prepared a sheet like for each of these periods?

A They're all the same.

Q You were the one who prepared it?

A Yes, everyone.

MR. KAUFMAN: I ask that I be allowed to substitute for this document, I think we said at the beginning that there would be no problem on that.

JUDGE COHN: Yes, but for the same period.

MR. KAUFMAN: For the same period.

I just want to make a photostat, I don't have a photostat with me.

JUDGE COHN: No problem.

MR. COFFEY: Okay.

Why don't you leave it up there and I'll make a photostat of it.

Q (Continuing by Mr. Kaufman) Now, are there any other type of schedules which you prepared relative to patients care?

A Assignment sheets and then I made a weekly sheet out for them, it was pertinent for bath, and that sort of thing.

JUDGE COHN: Wait a minute.

A weekly sheet made --

MR. KAUFMAN: I'm going toput them in right now so we'll clear it up.

Would you mark that, please.

(Whereupon, Respondent's Exhibit Light was marked for identification.)

Q (Continuing by Mr. Kaufman) I show you this document, marked Respondent's Exhibit Light, for identification, and ask you if you could identify it.

A Yes.

I made this for bath list and daily duties, I did it.

MR. COFFEY: I can't hear the witness.

JUDGE COHN: She made this for what list?

THE WITNESS: Assignment for the bath list and daily duties of the aides.

Q Is this something that youprepare?

A Yes.

Q Does any other LPN prepare this?

A No.

I did it.

Q Let me ask you about the document which is already into evidence.

Is this -- you testified this is what youprepared.

Does any LPN prepare this?

A N., no. No.

MR. KAUFMAN: I offer this, Respondent's Exhibit Eight, for identification into evidence.

JUDGE COHN: What does she call this?

MR. POLLACK: Bath.

MR. KAUFMAN: Is that what that's referred to, it is the bath list?

THE WITNESS: Bath list and daily duties.

MR. KAUFMAN: And daily duties?

THE WITNESS: Yes.

JUDGE COHN: Any objection to Respondent's Exhibit Eight?

MR. COFFEY: No.

JUDGE COHN: Okay.

Respondent's Exhibit Eight is received.

(Whereupon, Respondent's Exhibit Eight was received into evidence)

MR. KAUFMAN: With the --

JUDGE COHN: Yes, you can -- you have a standing

authorization, forsubstitution, if that's the right word.

MR. KAUFMAN: Would youmark this for identirication, please.

(Whereupon, Respondent's Exhibit Nine was marked for identification.)

Q (Continuing by Mr. Kaufman) I show you this document, marked Respondent's Exhibit Nine, for identification, and ask you if you could identify it.

A An assignment sheet for the aides, each week they have a new --

Q They have what?

A Each week there was a new one.

Q I see.

Now, could you tell us what date that is for?

A This is for July second, the week of July second.

Q Did you prepare that?

A I didn't fill this in, sir.

Q Okay.

A But this was my --

Q Had you filled in forms similar to that?

A Yes.

Q And didyou issue theforms that -- well, let me ask you this, the form which you used, is that the exact same form other than the writing on it?

A Yes, yes.

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Q So that theprinted material in type --

A Yes.

Q -- is your form?

A Yes.

Q Did you create that form?

A Yes.

Q Is this a system thatyou instituted at the home?

A Yes.

Q And was that system in effect at the home during the p eriod that I have been talking about, September '74 to Februrary, '75?

A Mr. Kaufman, I can't remember if we used them in September because we weren't that busy, but when we started to get busy we used them.

Q So that as thehome started to fill up beds, they -- you developed this form?

A Yes.

Q And is it your testimony thatthe use of this form, you're the one who filled itout?

A I filled them out when we started, yes.

Q Now, was this form used for all shifts?

A N , it was mainly for the day shift.

Q The day shirt?

A Yes.

Q And could you tell us how you filled out that form,

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how you knew which aides to assign?

In other words, the form I'm looking at has a name of an aides, and it has the assignment of patients, special duties, coffee break and meals.

Is that correct?

A Yes.

Q Now, could you tell us how you determined which aide to assign to which patients, or which rooms?

A I rotated them as a rule.

Q You rotated them.

A Rotated the aides on -- so they would -- they all have a chance at taking care of the various patients so they would get to know them.

Q And this was your dicision to rotate the aides?

A Yes.

Q Did anybody else ever fill out this sheet?

A I was showing Miss Mercado how to do it, but that's all.

She did it with my -- you know, help and permission, that's all.

Q So that Miss Mercado you were showing her how to do this sheet?

A Yes, she had never seen them before.

Q And she was doing it under your supervision?

A That's all.

MR. KAUFMAN: Seven and Eight were actually prepared by the witness.

Nine is a prototype of the form which the witness developed.

I'm only offering it for --

MR. CANTORE: The form?

MR. KAUFMAN: The form.

JUDGE COHN: All right.

Any objection to Nine?

MR. CANTORE: No objection.

JUDGE COHN: Mr. Coffey?

MR. COFFEY: Let me take another peek at it.

JUDGE COHN: What?

MR. COFFEY: Let me take another peek at it.

MR. POLLACK: I understand there are no objections, Your Honor.

JUDGE COHN: Didn't I say "received," I marked it received.

MR. POLLACK: I'm sorry, I didn't hear you.

JUDGE COHN: I thought I said it, maybe I didn't.

Nine is received.

(Whereupon, Respondent's Exhibit Nine was marked received)

Q (Continuing by Mr. Kaufman) Now, when Miss Mercado, when you were showing her how to fill out this form, did

she ever fill out -- did she ever fill itouton her own or was it always under your supervision.

A She filled it out, but then I had to okay it.

Q You had to okay everything she did?

A Yes.

Q And was she told anything -- or did you tell her anything on how to rotate the people or anything like that?

A Yes.

Q What did you tell her?

A Like the top name, the next week she could go down so that they'd all get the -- like this aide, the next week we got this one (indicating.)

Q Well --

A This patients --

Q So --

A -- and switched.

Q If I could understand that you told her that all she should do is move the top aide to the second aide?

A Yes.

Some of the floors have more aides.

Q Keep rotating it so that help rotated the patients?

A Yes.

Q Aside from that, the remainder of the writing on this sheet remained constant from week to week in terms of patients care?

A No.

Sometimes his dressing wouldn't be needed, you know, it improved.

MR. COFFEY: I can't hear that.

Q Sometimes the dressing would not be needed, it improved?

A Yes.

Q And how would the person filling out this know whether o r not the dressing was needed?

A Because the nurse on the floor checks them. They're supposed to check them.

Q So that would be from the medical records?

A Yes.

Q And it's your testimony that all of these forms required your approval?

A Yes.

Q Now, who did the hiring and firing at thehome for aides, orderlies and nurses?

A Who did what?

Q Hiring and firing?

A I did.

Q Could any of the LPNs do that?

A No, no.

Q In what capacity was Miss Mercado hired?

A She was a LPn on the day shift.

Q Could the LPN -- strike that.

Do you know an LPN by the name of Russell?

A Yes.

Q And what shift did Miss Russell work?

A Nights.

Q Was Miss Russell ever told what her duties would be at night?

A Yes, I told her.

Q Did you ever explain to Miss Russell what she should do in case of an emergency?

A Yes.

Q "hat was that?

A Normally if anything happened, she called me.

If it was someont that got very sick, she would call the doctor.

Q And could Miss Russell hire or fire?

A No.

Q Could she discipline employees?

A Miss Russell in her duties would go around and see that patients were getting proper care and if someone wasn't doing that, she would explain to them, butthis was explained, patient care, but not disciplining.

Q So it would be patient related?

A Yes.

Q Would about for other things, could she discipline

them?

A No, she usually told me in themorning.

Q And what about Miss Mercado, what was her title?

A She was a LPN.

Q Was she a charge nurse?

A A what?

Q Charge nurse?

A I don't know if you call them. I just called them a LPN, Mr. Kaufman.

They did -- I had charge of everything and they worked under me.

Q Did you work at the same time that Mercado worked?

A Yes.

Q During the same hours?

A Yes.

Q And if there were any problems with nursing during the time thatyouwere there, who were those problems brought to?

A I took care of it.

Q Are you familiar with employees by the name of Hazell, Terrell and Frazer?

A Yes, sir.

Q And in what capacity were they employed?

A They were employed, you know, on probationary period.

Q But how were they employed, were they aides, orderlies?

A Aides -- two of them were on nights and one on days, Terrell wason days.

Q Who was on nights and who was on days?

A Terrell was on days, the other two on nights.

Q And directing your attention to Frazer, an employee by the name of Frazer, did you hire Miss Frazer?

A Yes.

MR. KAUFMAN: Would you mark that, please.

(Whereupon, Respondent's Exhibit Ten was marked for identification.)

Q (By Mr. Kaufman) I show you Respondent's Exhibit Ten, for identification, and I ask you if you could identify that.

A It's her application form for employment.

Q Did you interview Miss Frazer?

A Yes.

Q And did you make any notation on that application?

A Yes.

Q What did you write on that application?

A I put the shift she wanted, the date she was to start and employed on trial basis.

Q Would you read us what 's in your handwriting on the first page of that application?

A "Twelve to eight, 10/31/74, trial."

Q And what's that indicate, "trial"?

A Youhire them on a probationary period, try them out.

Q And "10/31" is the date on which she was hired, is the date she was to start work?

A I can't tell you exactly when she started, M . Kaufman.

Q Now --

MR. COFFLY: I didn't get the last of that.

MR. KAUFMAN: She can't tell me exactly when she started.

MR. COFFLY: But --

MR. KAUFMAN: But what?

JUDGE COHN: That's all.

MR. COFFLY: There was something else, something that trailed off.

(Whereupon, the record was read)

JUDGE COHN: You missed Mr. Kaufman.

Q Now, duringthe time that Miss Frazer was employed, did you observe anything in connection with her employment ?

A She was late very often.

Q How did you know that she was late?

A Well, we have a sign-in book, everyone who is employed there signs in andout.

Q I show youRespondent's Exhibit Five, for identification.

A That's the aide sign-in book.

Q And is that the book that the aides signed in?

A Yes.

Q Now, you were telling us how you knew Miss Frazer was late.

Would you tell us again?

A She was late very often.

Q Yes. How didyou know that?

A I checked this book every day, to see who was in and would was out, you know, what time they came in and out.

Q And do you know how many times, approximately, Miss Frazer was late during the period of her employment?

A She was late 31 times.

Q And did there ever come a time when you did anything in connection with Miss Frazer's employment?

A I asked Miss Russell to speak to her and to ask her to try to be on time.

Q And did her lateness improve as a result of that?

A No.

Q Did there ever come a time when you terminated Miss Frazers' employment?

A Yes.

One morning -- one morning I looked at the book and saw she had been late again and she had already been told, so I called and it was about --

Q Well, let me show you the book and if -- see if you could

tell us approximately when it was that you terminated her employment.

A Here, on the 8th of January, she singed in at 12:14, that was -- you know, at night.

Q So that would be the morning of the 9th that she was working?

A Yes, when I came in I noticed it, so I called her and told her that she didn't seem to be able to make iton time and that I had decided to discharge her.

Q Doyou recall what day you calledher on?

A The next day.

Q Would that thenbe the 9th?

A Yes, as far as I know.

Q So you called her then the 9th.

Now, would you tell us what you said to her and what she said to you during that phone conversation?

A I told her that she had been late so much that I had decided to discharge her and she said all right.

Q Was there ever any mention of a union?

A N , that was the conversation.

Q Did you ever tell Miss Frazer that you knew she was active for 144?

A No.

Q Did you ever tell Miss Frazer anything to the effect that you knew she was signing cards for 144?

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A No.

Q The conversation thatyou have realted to us, is the entire conversation?

A that was the entire conversation.

Q On that morning?

A Yes, that was the entire conversation.

Q Now, directing your attention to the employment application again, you testified about some writing that you put in at the top.

Was that writing put in on the date that you interviewed her?

A Yes.

Q Now, there is also on the second page of the application, is that your handwriting?

A Yes.

Q And what's that say on the last day worked?

A The last day she worked was January 8th, I discharged her for continual lateness.

Q And that's what the application says?

A Yes.

MR. KAUFMAN: I offer this application into evidence.

MR. COFFEY: We would like theoriginal, if you have it.

MR. KAUFMAN: I don't have the original.

MR. CANTORE: We object to the introduction of this as evidence until we do see an original, we would allow a change afterwards, but I would like to see theoriginal before.

MR. KAUFMAN: I would have no objection to bringing in the original.

JUDGE COHN: Well --

MR. KAUFMAN: But we could save sometime here.

JUDGE COHN: Let's leave this in abeyance and I assume tomorrow you will produce the original.

All right.

Let's get on with this.

Q (Continuing by Mr. Kaufman) Now, you testified that you examined that time book, is that something you do on a daily basis?

A Yes.

Q And is that a matter of routine with you?

A Yes.

Q You testified about an employee by the name of Albert Hazell.

A Yes.

Q Do youknow what shift Mr. Hazell worked on?

A Twelve to eight.

MR. KAUFMAN: Would you mark this, please,

(Whereupon, Respondent's Exhibit 11 marked for identification.)

Q (Continuing by Mr. Kaufman) I showyou Respondent's Exhibit Eleven, for identification, and ask you if you could identify it.

A This is an application for employment.

Q Who is that for?

A What?

Q Who is it for?

A Mr. Hazell.

Q And did you put any writing on that document?

A Yes.

Q And what is that?

A Started 9/19 and hiring temporarily.

Q At the time that Mr. Hazell was hired, could you tell us what the conversation between you and Mr. Hazell was concerning his employment?

A Mr. Hazell was going to school and he had to have split days, so I told him he would be hired temporarily until I could get a staff.

Q And did he agree to that?

A Yes.

(Continued on following page)

Q Now, when you say split days, can you tell us what you mean?

A Well, normally when you schedule time off you try to give the employees two consecutive days and his schooling made it so that he had one day off, he worked one day and he was off the next day.

Q So that he would not be able to work five consecutive days?

A No.

Q How long have you been a director of nursing service homes?

A Since 1961.

Q Are you familiar with the staffing patterns by aides and orderlies in homes?

A Yes.

Q What is the general staffing pattern in terms of split days off or consecutive work week?

A You try to give them two days off togehter.

Q And is that generally the way it is done?

A Yes.

Q W s he told how long he wouldbe working?

A No, not exactly.

No. He worked on his -- he worked nights and I told him I wanted to try to get a steady staff.

Q During the period that Mr. Hazell was employed --

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Did there come a time when you terminated Mr. Hazell's employment?

A Yes. It was getting difficult --

Q Well, just did there come a time.

A Yes.

Q Yes?

A Yes.

Q Do you recall about when that was?

A Sometime in January.

Q I show you Respondent's Exhibit 11 for identification and ask you if you can tell us when you terminated his employment.

A His last day was the 12th, January 12th.

Q During the period of his employment, September 19th to January 12, did you have occasion to observe his work?

A Yes.

Q What did you observe about Mr. Hazell's work?

A He was late frequently.

And he used to stop and have discussions rather than serve the patients.

Q Do you know what he was discussing?

A No.

Q Had there been complaints about any members of the

night shift about split days off?

A Yes.

I had to split someone else's days off in order to give him split days and they started to complain.

Q Who complained?

A Some of the other aides and orderlies.

Q The aides who were having split days?

MR. COFFEY: Objection.

A Yes.

MR. COFFEY: Hearsay.

MR. KAUFMAN: She is testifying about direct conversations she had.

JUDGE COHN: Overruled.

Q You testified that thelast day Mr. Hazell worked was 1-12.

Couldyou tell us how you terminated Mr. Hazell, under what circumstances?

Was he at work that day?

A I terminated him in our office -- when I came in in the morning.

Q Where did you see Mr. Hazell and what happened?

JUDGE COHN: When he came in, this is on the morning of January 12th?

THE WITNESS: No, the 13th.

JUDGE COHNE: Okay.

Q What happened?

A I saw him in the dining room and I asked him if he's please come to the office.

He came to the office and I started to talk to him --

Q Well, instead of telling us that you tried to talk to him, tell us what was said.

A I started to talk to him and I couldn't.

He said, you called me in because of Local 144 and I said I didn't, I don't know anything about Local 144.

And he said, You know, Miss Russell told you. I went to the Labor Board and you know I'm with 144, and I said, I don't know anything about it.

He became annoyed and he was yelling and he got up and as he left, I said, you were hired only temporarily and he left the office.

Q Did you ever tell him during the conversation that day thatyou were aware of his activity for 144?

A No.

Q Mr. Hazell was the one who mentioned the uninn?

A Yes.

MR. KAUFMAN: I offer into evidence the employment application for Mr. Hazell.

MR. CANTORE: I make the same objection to this one.

I would like to see the original first.

MR. KAUFMAN: I will bring it.

JUDGE COHN: Okay.

We will hold off ruling on that until tomorrow.

MR. KAUFMAN: I want to go forward with these documents.

At least we can finish.

JUDGE COHN: I was hoping you would.

BY MR. KAUFMAN:

Q Doyou know an employee named Terrell?

A Yes.

Q What shift was she on?

A 8 to 4.

Q In the mornings?

A Yes.

MR. KAUFMAN: Would you mark that, please.

(Document marked Respondent's Exhibit 12 for identification.)

Q I show you Exhibit 12 for identification and ask you to identify it.

A This is Miss Terrell's employment application.

Q Had you had any knowledge whatsoever of Miss Frazer's activities on behalf of any union?

A No, no.

Q Directing your attention to Respondent's Exhibit 12

for identification, are there any handwritten notations in your script on there?

A Yes.

I put down trial and the date she started, 12-4-74.

Q When you put down trial, that would be the same explanation for the trial period you gave before?

A The probationary period.

Q For Miss Frazer?

A Yes.

Q Did you have occasion to observe Miss Terrell at work?

A Yes.

Q What did you observe?

A She wasn't a very goodaide, very poor worker. She was untidy about herself, her hair, clothing and she didn't give goodpatient care.

Q What about her attitude?

A She was a little snippy.

Q Could you tell us any instance where she wasn't giving proper patient care?

A She didn't take care of them well, dress them well, bathe them, keep them clean.

Q Was there ever an incident where anything about Miss Terrell was reported to you by an LPN?

A Yes.

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One day Miss Russell told me that she asked her to -- when she came in on days, you know, in the morning, she told her she didn't have to take orders from her.

Q Do you know when that was?

A Toward the end of December, somewhere around there. I can't be sure.

Q When was Miss Terrell fired?

A Somewhere in January.

Q I show you Respondent's Exhibit 12 and ask you whether that would tell you the last day she worked.

A The 12th.

Q Did you notify her of her termination?

A Yes.

Q Howwas that done?

A I called her and told her that I didn't think her work was satisfactoryand that I was going to let her go and she said all right, and that was it.

Q Were you aware of any union activity on the part of Miss Terrell?

A No.

Q For any union?

A No.

Q Did you everpromise pr gramt wage increases during November, December and January to employees in order to have them sign cards for 531?

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A No.

I have no authority to grant raises.

Q Did you ever ask an employee to sign a union card?

A No.

Q Did you ever tell any nurse or employee that they had to join Local 531 in order to keep their jobs?

A No.

Q Didyou ever request them -- did you ever tell nurses to tell aides and orderlies that you were requesting them to sign cards for Local 531?

A No.

Q I direct your attention to an employee named Philips.

Did you everapproach him and ask him to sign an authorization card for Local 531?

A No.

Q I show you party in interest 5-W to point out that this is thetype of card which I am questioning you about now, application for membership.

Did you understand that to be my question?

A Yes.

Q Did you ever ask any employee to sign one of those authorization cards for Local 531?

A No.

Q I show you REspondent's Exhibit 12 --

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MR. KAUFMAN: I offer Respondent's Exhibit 12 for identification into evidence at this time.

MR. CANTORE: Same objection.

MR. KAUFMAN: Well, might I ask so that we could have some clarify on this later on, is there any objection to the offer other than they want the original?

MR. COFFEY: We may. We may very well have an objection.

JUDGE COHN: Look, produce the original and let's see whathappens.

Why speculate.

MR. KAUFMAN: Okay.

Q I show you Respondent's Exhibits 10, 11 and 12 and looking at the top would you tell me, on two of those I notice there is the word trial, which two are those?

A Miss Frazer and Miss Torrell.

Q And on Mr. Hazell's there is the word temporary?

A Yes.

Q Was it your testimony he was hired in a different status?

A Yes, because of the shift-- his split shift.

MR. KAUFMAN: I have no further questions.

JUDGE COHN: Mr. Pollack, do you have any questions?

MR. POLLACK: No, nothing.

JUDGE COHN: Off the record.

(Discussion off the record.)

JUDGE COHN: On the record.

The hearing will be in recessuntil 9:30 tomorrow morning.

(Hearing adjourned at 4:45 p.m.)

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and x

SAMUEL LIEFER AND HARRY OSTREICHER, A COPARTNERSHIP, d/b/a RIVER MANOR HEALTH RELATED FACILITY, :

Party in Interest :

SAMUEL LIEFER AND HARRY OSTREICHER, A COPARTNERSHIP, d/b/a RIVER MANOR HEALTH RELATED FACILITY :

and :

LOCAL 1115, JOINT BOARD, NURSING HOME AND HOSPITAL EMPLOYEES DIVISION : Case No. 29-CA-4307

- x

16 Court Street,
Brooklyn, New York 11201
Tues., July 15, 1975

The above-entitled matter came on for further hearing, pursuant to notice and adjournment, commencing at 9:30 o'clock a.m.

BEFORE:

HON. JULIUS COHN, Administrative Law Judge

APPEARANCES:

VINCENT COFFEY, ESQ., Counsel for the General Counsel.

ROBERT CANTORE, ESQ., Vladeck, Vladeck, Elias & Lewis, Esqs., 1501 Broadway, New York, New York, appearing on behalf of Local 144

ARTHUR KAUFMAN, ESQ.,	Jackson, Lewis, Schnitzler & Krupman, Esqs., 861 Madison Ave., New York, N. Y., appearing on behalf of River Manor.
SANDFORD POLLACK, ESQ.,	Gutterman & Pollack, Esqs., 71 South Central Avenue, Valley Stream, New York, appearing on behalf of Party in Interest Local 531.

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PROCEEDINGS

JUDGE COFFEY: Let's go on the record.

The hearing will be in order.

Respondent has produced the originals of Respondent's Exhibits 10, 11 and 12, copies of which were marked yesterday for identification.

Now, after looking at these originals, Mr. Coffey do you have any objection to their admission?

MR. COFFEY: Yes, your Honor.

As to the forms themselves and to those matters which are filled in, we have no objection.

However, as to the notations on the top of the formk on top of Brenda Fraser's form, it says, Brenda Fraser, 12/8, 10/31/74 - Trial, and Mr. Hazell's form it says 9/19, Hired Temporary, and on Mrs. Terrell's form it says, 1/10-something that is unintelligible, Trial 12/4/74.

These are not part of the document as a record kept in the ordinary course of business and we would object to them as self-serving declarations.

Wiat a minute.

Are these-- First, let me clarify one thing. Are these originals that were just produced?

MR. COFFEY: Yes.

JUDGE COHN: Or put it the other way, are the Xerox copies produced yesterday exactly the same as

MR. COFFEY: We think the notations at the top on part of Mrs. Harrington are not part of the regular business record and constitute a self-serving declaration.

MR. CANTORE: Not only that, counsel has failed to produce any other business records which might verify that she has filled out as a regular course of business; without meaning to sound like I am charging Mrs. Harrington with any impropriety I mean it is very easy to put these on at any time.

MR. KAUFMAN: Well, if I may be heard--

JUDGE COHN: No more; nobody will be heard.

The respondent's Exhibits 10, 11 and 12 are received.

(Thereupon, Respondent's Exhibits 10, 11 and 12 received in evidence, of this date.)

MR. KAUFMAN: May we substitute a copy for the original?

JUDGE COHN: Yes.

MR. COFFEY: Leave the original there for the time being. I have some more questions on the original.

MR. KAUFMAN: It is an exact duplicate.

MR. COFFEY: I still have some more

questions.

JUDGE COHN: On voir dire.

MR. COFFEY: On cross examination.

JUDGE COHN: Use the duplicate.

MR. COFFEY: I want to use the original.

JUDGE COHN: Why?

MR. COFFEY: If I tell you why then I won't be able to do what I want to do.

JUDGE COHN: Use the original, okay. You can withdraw them at the end of the day.

MR. KAUFMAN: You can withdraw them at the end of the day.

MR. KAUFMAN: Fine; no. No problem, your Honor.

MR. KAUFMAN: I have--

JUDGE COHN: Before regular cross examination--

MR. POLLACK: I have one question.

JUDGE COHN: Go ahead.

Q (By Mr. Kaufman) Do you know a LPN by the name of Link?

A Yes.

Q During what period was Miss Link employed, if you recall?

JUDGE COHN: That is L-i-n-k?

MR. KAUFMAN: Right.

THE WITNESS: She didn't work too long and she wasn't--she stopped working in the middle of December.

Q Was she there in November?

A Possibly.

Q What shift did Miss Link work on?

A 12:00 to 8:00.

Q Do you know was she a regular employee? What was her status?

A She relieved Miss Russell occasionally on Miss Russell's nights off,'

Q Did she work every week?

A I don't think she did. I don't know for sure.

Q And when she worked, do you know how often she worked, one day a week, two days a week?

A One or two days a week.

Q At the most two?

A At the most; yes.

Q And then it was occasional? Was it every week that sh e worked either one or two days?

A I don't think every week Mr. Kaufman. I'm not sure.

MR. KAUFMAN: I have no further questions.

JUDGE COHN: All right.

Do you have anything?

MR. POLLACK: Nothing; th ank you.

JUDGE COHN: All right.

CROSS EXAMINATION

Q (By Mr. Coffey) Can you tell us why Mrs. Link only worked one or two days a week, Mrs. Harrington?

A We only had need for one LPN and Miss Russell worked the rest of the time.

Q Was it not difficult to find LPNs under any circumstances to work at that time?

MR. KAUFMAN: Objection.

JUDGE COHN: Overruled.

A I don't think so. I managed to keep the place covered.

Q On the nights that Mrs. Russell worked were there any LPNs on with her?

A No.

JUDGE COHN: The answer is no?

THE WITNESS: No.

Q (By Mr. Coffey) On the nights that Mrs. Link wroked were there any other LPNs on with her?

A No.

Q Were there any RNs in the home?

A No.

Q Was there anybody from management there wh en the 12:00 to 8:00 shift was on?

A No. I was on call.

Q And what did Mrs. Russell do when she was in the home at nights?

A Her duties?

Q Yes.

A She made rounds. She gave medications. She saw that the aides were doing proper patient care.

Q Did she have a particular work station where she stayed when she wasn't making rounds?

A Did she have a work schedule?

Q Station, a work station.

A Yes.

Q Where was that?

A The staff room.

Q At the beginning of her shift did she have a particular duty to perform in the staff room?

A She got the report from the other nurse.

Q To who? Who did she read it to?

A From the other shift.

Q And who did she read it to?

A She read the report; it was written--

Q Did she read it to the aides and orderlies on her shift?

A No; she read the report herself and got it from the--the rest of it that wasn't -- little

odds and ends from the 4:00 to 12:00 nurse when she went off.

Q And did she say anything to the aides and orderlies on her own shift?

MR. KAUFMAN: Objection. Did she say anything to the aides and orderlies in reference to what? I assume during the night she said Hello.

JUDGE COHN: Overruled. I assume by that you mean did she say -- did she ever say anything to them.

MR. COFFEY: Right. Let us start with that.

MR. POLLACK: Objection, your Honor.

JUDGE COHN: Overruled.

Did she ever say anything to the people that were working there, the aides and orderlies?

THE WITNESS: Well, if there was a new patient who came in, she would tell the aides, if something happened that was necessary for the aides to know, I am sure she would tell them; yes.

That's the way you take care of people.

Q (By Mr. Coffey) If someone was out sick, would she change floor assignments, give an aide a different floor assignment than they would otherwise have?

A I assigned them, sir.

Q Right.

A If somebody did not come in or she changed or--she had to put them where she needed them, yes.

Q All right.

If Mrs. Russell saw an employee who wasn't working properly would she tell you about it?

A Yes.

Q And did she generally tell you how the employees were working?

A Yes.

Q During the nightshift?

A Yes.

Q That was one of her duties?

A Yes, sir.

Q And did she also transfer the information from you to the employees?

A On occasion I asked her.

Q And there are occasions when she would warn employees concerning deficiencies in patient care?

A That was Miss Russell's duty. If she saw an aide doing something wrong she told them and then told me in the morning.

Q And she-- But that was the only type of warning she gave, was about patient care?

A The only what?

Q The only type of warning she gave concerned patient care?

A It wasn't a warning. It was just telling people, correct them if you see something does something wrong.

Q But the things that she would correct had only to do with patient care and nothing else?

A Patient care.

Q But you testified on direct examination that she also wanred people about latness.

MR. POLLACK: Objection.

MR. KAUFMAN: Objection.

MR. POLLACK: That is not the witness' testimony.

JUDGE COHN: Well, I think--

MR. COFFEY: The record will speak for itself, your Honor.

JUDGE COHN: I know, but you characterized some of the stuff in the record that might give somebody who reads the record an -- a wrong impression.

If you want to talk about her testimony you should have it pretty much in the words she said it or else go over the ground yourself.

MR. COFFEY: All right, your Honor.

JUDGE COHN: I will sustain the objection as to form.

Q (By Mr. Coffey) Did you ever tell; did you ever tell Mrs. Russell to warn the entire night shift concerning lateness?

A I told--asked her to tell the girl, tell the employees, you know, to try to be on time; yes.

Q And wasn't it on that occasion that she warned Brenda Fraser about latness?

MR. KAUFMAN: Objection.

JUDGE COHN: Overruled.

MR. KAUFMAN: Your Honor, she just testified she had warned the whole group.

JUDGE COHN: I know, but now he is asking her about Brenda.

Go ahead.

THE WITNESS: I can't remember if it was the same time, sir.

Q And when--and-- But -- You testified she only warned Brenda Fraser on one occasion about latness; is that right?

A I asked Miss Russell; yes.

Q On one occasion?

A Yes.

Q And when was that occasion?

A I think it was sometime in December.

Q Can you pin it down for us?

A What?

Q Can you pin it down for us.

A Did I put it down?

A Did I put it down?

Q Can you pin it down for us?

A No. I think it was in December, sir.

Q What part of December?

A I really couldn't tell you.

Q Does Mrs. Russell give out the paychecks to the employees?

A She may have; yes. They were left in an envelope there.

Q You are not sure whether she gave them out or not?

A I left them with her name on.

Q You left them in an envelope with her name on them?

A Yes.

Q On it?

A Yes;

Q And where were they left?

A I used to leave them on the b ulletin board because the staff room was locked then we left them in the narcotic box.

Q In the narcotic box?

A Yes.

Q Who had a key to the narcotic b o x e s?

A The nurses.

Q The only nurses on duty at night was Mrs. Russell?

A Yes.

Q Is that right?

A Yes.

Q But you don't know if she gave out checks to employees?

A She probably took the envelope and left them for them to take.

Q The envelope with her name on it?

A Yes.

Q If Mrs. Russell finds an employee who is not in the working area, what does she do?

MR. KAUFMAN: Objection; unless there is a basis for this if it ever happened, did she instruct her what to do?

JUDGE COHN: Overruled.

Q What is her duty in that case?

A I am sure if she found--

MR. POLLACK: That is two different questions, your Honor.

MR. KAUFMAN: One is what is her duty and the second is--

JUDGE COHN: Yes.

MR. COFFEY: Okay, your Honor.

Q (By Mr. Coffey) What is she supposed to do?

A If she saw someone out of her working area.

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Q Yes?

A If she saw somebody sitting in the lounge where they couldn't see the patients' lights and see the patients she would ask them to go where they could watch and hear the bells.

Q If she did not find an employee in the working area, is it her duty to ask the employee where the employee has been?

A She probably looked for them until she found them.

Q And if she foundthem would she ask them were they had been?

MR. KAUFMAN: Objection. This is highly speculative.

JUDGE COHN: Overruled.

MR. KAUFMAN: There has been no foundation.

JUDGE COHN: Overruled.

A If she found them then she knew where they were.

Q Is it part of Mrs. Russell's duties to ask employees where they are if she can't find them for a time? Or where they have been?

A Yes, she probably could if she couldn't find someone.

Q If something goes wrong on the night shift, Mrs. Harrington, who do the aides and orderlies report to about this?

MR. KAUFMAN: I would like to register

same objection as to the words "something goes wrong," as I have been registering all along on this type of phrase.

JUDGE COHN: All right. I will allow it. I wish you would get more specific, though.

MR. COFFEY: All right.

JUDGE COHN: Go ahead.

If something is wrong-- I don't know what that means--

MR. COFFEY: If there is a problem with a patient on the night shift, who do the employees go to?

THE WITNESS: Miss Russell.

Q (By Mr. Coffey) If there is a problem--let's say there is a flood on the floor, who do the employees go to?

MR. KAUFMAN: Objection.

A Miss Russell.

JUDGE COHN: Overruled.

Q Miss Russell?

A Yes.

Q If there is any kind of work-related problem that the employees have, who would they go to on the night shift to discuss it?

A If it is not an emergency they come to me in the morning, sir.

Q Let's say it is an emergency, who would they go to then??

A Miss Russell. She takes care pf patient care at night.

Q And when Mrs. Russell isn't there they would go to Mrs. Link?

A That's right.

Q Mrs. Link could have the same duties as Mrs. Russell?

A Yes.

Q Do the employees report to Mrs. Russell when they come in at night?

A I think Miss Russell checked th em in to see if they signed.

Q She sees if they signed in?

A Yes; to see everybody was there.

Q Do they report to her?

A I'm sure they did.

Q I direct your attention to Respondent's Exhibit 9 which is a form that you devised; is that correct?

A Yes.

Q And you said at some point you allowed Mrs. Mercado to fill out this form?

A I was teaching her how to do it.

Q Did she-- And how did you teach her how to do it?

What did that teaching entail?

A I explained things; the reason, and how to do it, sir.

Q And did she ever prepare these forms op her own?

A She prepared them, but then brought them over to me and showed me to see if they were all right.

Q So she would in effect prepare the form as to--

A This is after I showed her how.

Q After you showed her?

A Yes.

Q How long did she engage in preparing the forms on her own?

A We did not start using them until maybe November. So it would be at the most a month.

Q A month?

A Yes.

Q And what did you teach her to do?

A How to assign patients and patient care to certain aides.

Q And that was-- As you testified on direct examination, you just told her to keep rotating the patients; is that right?

A Rotating the aides.

Q Rotating the aides?

A Yes.

Q -- down the form each week; is that right?

A Yes.

Q Was there any other instruction that you gave her involving the form?

A Just how to fill out the special duties and coffee break and meals, so that the floors were covered at all times.

Q And she did this for about a month for the aides on her shift?

A Yes.

Q And how manyaides was that?

A Well, we only had two, I think, at the time, on the first floor and two on-- Two.

Q So in effect she was assigning them to the particular patients and to their particular duties and assigning their coffee break time and their mealtime?

MR. KAUFMAN: Your Honor, objection.

JUDGE COHN: Overruled.

A Under my supervision.

Q (By Mr. Coffey) By "under my supervision," what do you mean by that, Mrs. Harrington?

A Miss Mercado had never seen one of these before so she had to be shown and all the special duties and this and then I went over it to see it was all right.

Q You would check what she had done?

A What she was doing.

Q But she would make the initial decision on all these categories on the form?

MR. KAUFMAN: Objection, your Honor. That has not been the witness; testimony.

At this point counsel is misleading the witness.

JUDGE COHN: Overruled.

THE WITNESS: What was the question?

Q But she would be the one who makes the initial decision as to all the categories on the form?

A I made the first one so all she had to do was change the names and as far as this is concerned--

JUDGE COHN: When you say "this," what are you pointing to?

MR. COFFEY: She is pointing to special duties.

THE WITNESS: I am sorry.

A (Continuing) The special duties, we all knew if somebody needed a dressing, if somebody needed their urine tested. And it was down, and I made sure--and I checked to make sure they were all there, and when these two people, one automatically goes to one coffee break and one meal and the other one goes to the next one to keep the floor covered.

Q She would fill out the form and assign the coffee break to whichever one she--

A This is the way.

Q -- decided?

MR. POLLACK: Again, your Honor, this is not the witness' testimony.

JUDGE COHN: Overruled. He is asking the form of a question.

Overruled.

A This is the way they always stayed (indicating).

Q Why were you allowing Mrs. Mercado to prepare these forms?

A Eventually when the place was getting busier and busier that would be one of the LP's duties and Miss Mercado had never seen one of these before. I was trying to teach her.

Q And she filled them out for about a month?

A Under my supervision, sir.

Q Was she an apt pupil, Mrs. Harrington.

MR. KAUFMAN: Objection.

JUDGE COHN: Overruled.

Q Was she an apt pupil?

A Was she whaT?

Q Was she an apt, a good pupil?

A Pretty good.

Q Did she learn quickly?

A Yes.

Q Did it require a lot of assistance on your part to help her in completing these forms over the course of a month?

A Yes. I helped her.

Q But-- Did there ever come a time when she was self sufficient in completing these forms?

A No; she left.

Q You say that she learned quickly?

A I said fair--

MR. KAUFMAN: Objection. It is becoming argumentative.

JUDGE COHN: Lets get on with it. Whether she learned quickly or did not learn quickly, what difference does it make?

MR. COFFEY: It is to the credibility, too, your Honor.

JUDGE COHN: Credibility as to what?

MR. COFFEY: Mrs. Harrington has testified that this is a formthat is fairly standardized and she said it took her a month of constantly checking Mrs. Mercado's performance, at no time under which she--Mrs. Mercado was capable of doing it herself. Yet she says Mrs.Mercadn

record.

Q (By Mr. Coffey) Have you ever given out dues checkoff cards for Local 531, Mrs. Harrington?

MR. KAUFMAN: Objection, unless we can have a reference as to time.

JUDGE COHN: He said "Have you ever."

All righ t. Overruled.

MR. POLLACK: Can we show the witness what it is since that is generally a word of art used--

JUDGE COHN: Yes. That I think we ought to do since that word has been bandied about.

You are referring to what we have been calling the pink one?

MR. COFFEY: The one that is in evidence, your Honor.

JUDGE COHN: Show her 9.

MR. KAUFMAN: I am sure she did not sign one so just show her a card.

MR. COFFEY: Okay.

Q (By Mr. Coffey) I show you General Counsel's Exhibit 3 and ask you have you ever given out cards to employees such as these (indicating).

A These aren't cards, I gave them out.

Q You gave them out?

A Yes.

MR. COFFEY: And she said no, and this is a dual purpose card here, and we want to know if she gave out other kinds of cards.

MR. KAUFMAN: But that was never asked of the witness on direct examination. The witness was shown, your Honor, one of these cards.

MR. COFFEY: Respondent's 5.

MR. POLLACK: Party in Interest 5.

MR. COFFEY: Pardon me.

JJDGE COHN: All right. There is a Respondent's 5 which is an authorization card.

MR. KAUFMAN: Right. My questions were specifically limited to an authorization card.

JUDGE COHN: Well, I'll tell you. I'm going to overrule the objection.

MR. KAUFMAN: Is he going to be allowed to explore this area in its full?

JUDGE COHN: Well, let's see how far he goes.

All right.

Now I don't know if we got an answer-- Oh, yes, we did get an answer. She said she did get and give out checkoff cards, dues checkoff cards.

JUDGE COHN:: What is your next question?

Q (By Mr. Coffey) Whom did you give them to?

MR. KAUFMAN: Objection.

JUDGE COHN: Overruled.

A The people, aides, and the LPs.

Q And the LPNs.

Now, did you give any checkoff cards to LPNs who were working the evening and night shifts--

MR. KAUFMAN: Objection.

Q -- to distribute?

JUDGE COHN: Overruled.

A Are those checkoff cards?

Q Yes.

JUDGE COHN: The pink one, we are talking now nnly about the pink card.

MR. COFFEY: There is also a white one that goes with it, your Honor.

JUDGE COHN: Well-- Alo you did is show her a pink card.

MR. POLLACK: I believe the witness has differentiated between cards and slips and that might assist. It is possible we can get some clarification from the witness as to--

JUDGE COHN: Now there is also that form of who or whatever you are going to call it, that had to do with benefits of some sort.

MR. COFFEY: Right.

MR. COFFEY: Right.

JUDGE COHN: Now, we will probably go into that.

JUDGE COHN: We should get a clarification as to which one exactly we are talking about. You showed her the pink one and I assume that is what her answer covers. Was there anything attached to that pink card?

THE WITNESS: There was a white sheet, sir, with a pink one underneath.

JUDGE COHN: A white sheet did you call it?

THE WITNESS: Paper.

MR. COFFEY: Let's see--

MR. POLLACK: Can we have the witness' answer. I did not hear it.

JUDGE COHN: She said there is a white paper with a pink one underneath. What does that mean?

Q (By Mr. Coffey) Did the white paper say the same thing as the pink paper?

A They are on top of each other. They were attached, I think.

Q Yes.

JUDGE COHN:: Are they identical?

THE WITNESS: Yes.

JUDGE COHN: In other words, a white and pink copy.

THE WITNESS: Yes.

JUDGE COHN: I see.

MR. COFFEY: Okay.

Q (By Mr. Coffey) You say you gave these out to aides; is that right?

A Yes.

Q And you also gave them to LPNs?

A Right.

Q Now, is it your testimony that you also gave cards to LPNs on the evening and the night shifts to give out to aides?

MR. POLLACK: Your Honor, I have a twofold objection.

Firstly, I would like to fix th e time of this occurrence and now your Honor Mr. Coffey has switched from pink slips to cards and I don't think that that is fair when the witness has differentiated in her testimony.

MR. KAUFMAN: And furthermore he has asked the witness is it also your testimony, and there has been no testimony to that effect.

JUDGE COHN: Yes.

Well, let's get th e form of the question proper. Otherwise somebody who reads this record, even after me, six months after me, they are not going to know

what you are referring to or what the witness was referring to.

Now we are talking about the pink checkoff card all the time or refer to it as that. When you shift from one thing to--

MR. COFFEY: Well--

JUDGE COHN: Wait until I finish.

(Continuing) -- to a card and we in the business here know that they are authorization cards, checkoff cards-- Let's be specific, so we know exactly-- Don't keep shifting from one question to the other. If you are on the pink chards, keep it up with the pink cards or the checkoff cards, however you want to talk about it.

Q (By Mr. Coffey) You gave copies of these pink and white slips that you have testified about to aides and LPNs; is that right?

A Yes.

Q Now did you give copies of these pink and white slips to LPNs on the evening and night shift to be distributed to the aides on that shift?

A I left them in an envelope, sir.

Q You left them in an envelope?

A Yes.

Q All right.

And where did you leave them in the

envelope?

A With the payslips. With their paychecks.

Q With the employees' paychecks?

A Yes.

Q And was this done more than once?

A No.

MR. POLLACK: Can we fix the time?

MR. KAUFMAN: Your Honor, again I object to the question as outside the scope of direct.

JUDGE COHN: Overruled.

Q (By Mr. Coffey) When did this occur that you left the--

MR. KAUFMAN: May I have a standing objection, your Honor.

JUDGE COHN: What?

MR. KAUFMAN: May I have a standing objection--

JUDGE COHN: Yes.

MR. KAUFMAN: -- to this whole line of questioning.

JUDGE COHN: Yes.

Q (By Mr. Coffey) When did you leave the pink and white slips with the LPNS on the night shift in an envelope?

MR. KAUFMAN: Objection.

Now that was not the witness' testimony

again. The question was evening and night shifts. Now he is switching direction and getting just to night shift.

MR. COFFEY: All right.

JUDGE COHN: I thought he referred to night shift before.

MR. KAUFMAN: No; he referred to evenings and nights.

MR. COFFEY: All right.

JUDGE COHN: Let's be consistent.

MR. COFFEY: All right.

Q (By Mr. Coffey) Can you explain to us what you did, Mrs. Harrington, in detail, in regard to these pink and white slips that you left in an envelope?

MR. KAUFMAN: Can we have a time for this, your Honor?'

JUDGE COHN: Yes.

Do you want to get down to what month, at least?

MR. COFFEY: Yes.

Q (By Mr. Coffey) When did this happen?

A I think it was in January.

Q And what did you do?

A I left them for the afternoon and night shift in an envelope with their paychecks.

Q And where did you leave the envelope?

A In the narcotic box, probably.

JUDGE COHN: Can you tell me what you did with the people on the dayshift?

THE WITNESS: When they came to get checks I gave it to them.

JUDGE COHN: The people on the day shift would come to you for it or for their checks because you were there at the time?

THE WITNESS: Yes.

JUDGE COHN: All right.

I have already covered the day shift now.

MR. COFFEY: Okay.

JUDGE COHN: Go ahead.

Q (By Mr. Coffey) Did you talk to the LPNs and the charge nurse on the evening shift about what was to be done with these dues checkoff cards?

MR. POLLACK: Dues checkoff slips, your Honor.

MR. COFFEY: Sli0s, excuse me. Pink and white slips. Excuse me.

A I'm sure I told her that in with the pay there was some slips for the union.

Q And whowas the charge nurse on the evening shift at that time?

MR. KAUFMAN: Objection. There has been no

testimony to the words "charge nurse." Now that is a new word that's been used here.

JUDGE COHN: Wait a minute. It has been used back and forth--

MR. KAUFMAN: It might have been used by Miss Russell but never by this witness.

JUDGE COHN: All right.

Are you referring to the LPHs?

MR. COFFEY: Yes.

Q (By Mr. Coffey) Who was the LPN on duty on the evening shift?

A Miss Allen.

Q Miss Allen?

A Yes.

Q And you told-- And what was your conversation with Miss Allen about these slips?

A Mr. Coffey, I have nothing to do with the union and I just left them there and told her there was some union slips in with the pay envelope.

Q And did you also talk to Mrs. Russell?

A I did not see Mrs. Russell that night. I am not there at midnight.

Q Did you leave her some slips?

A They were left 4:00 to 12:00, 12:00 to 8:00.

Q Separate envelopes?

A Yes.

Q With the paychecks?

A Yes.

Q What day is payday in the home?

A Thursday.

Q Thursday?

A Yes.

Q And the night shift would be paid on -- actually it would be early Friday morning?

A Midnight when they come in Thursday.

Q And if I can say to you simply what day ends the work week at the home?

A Saturday night.

Q Saturday night?

A Yes.

Q So someone-- If they worked Saturday night would complete the workweek?

A Yes.

JUDGE COHN: Wait a minute. That is not so clear either.

If somebody-- If somebody works--comes to work Saturday, you know, quarter to 12:00, midnight, and they work--and then they work from midnight until 8:00 un the morning, for them that is Sunday, is that right, or is that part of Saturday?

THE WITNESSL Part of Saturday. The week starts Sunday morning at 8:00.

JUDGE COHN: Okay. Very good.

Q (By Mr. Coffey) You do all the hiring of orderlies and aides at River Manor, Mrs. Harrington?

A Yes.

Q And are you the only registered nurse at River Manor?

MR. KAUFMAN: Can we have a time period? Is he now talking about now, prior to February 1975 were you the only registered nurse at River Manor?

A Occasionally one came in for relief but most of the time I was the only one, yes.'

Q By "occasionally," how-- How many times would that be?

A Very vew.

Q Less than five?

A Are you going from October to February?

Q Yes.

A Not much more than that, I would say.

Q On a day-to-day basis you were the only registered nurse?

A Yes.

Q How many people did you hire, approximately, between the time you started with River Manor and January 13, 1975. You don't have to give me exactly, but about how

A Mr. Coffey, I couldn't give you any idea.

Q Well, was it more than 30?

A I'm sure it was.

Q Okay.

Did you ever warn Mrs. Fraser about lateness, herself, prior to the time she was discharged?

A I asked her--

MR. KAUFMAN: I object to the form of the question. If he means personally then I think he should use the word "personally."

JUDGE COHN: He said "yourself."

MR. KAUFMAN: Herself.

MR. POLLACK: Herself

MR. KAUFMAN: Meaning Miss Fraser herself.

MR. COFFEY: I said yours.

MR. KAUFMAN: Did you ever warn Mrs. Fraser personally, herself?

MR. POLLACK: You used the term "herself."

MR. COFFEY: I didn't use the term herself.

JUDGE COHN: Hold it.

Ask another question.

Q (By Mr. Coffey) Did you ever warn Mrs. Fraser about lateness prior to her discharge directly, personally?

A I think I told you I asked Miss Russell to do it.

Q But you never did?

A No.

Q Did you ever call Mrs. Fraser in on a night that she was not scheduled to work?

A Not that I recall.

MR. POLLACK: You mean yourself--objection, you mean, personally, or do you mean indirectly?

JUDGE COHN: Yes, why don't you--

Q (By Mr. Coffey) Did you ever personally call her in on a night she was not scheduled to work?

A Not that I know of.

Q Did you ever tell anyone else to do it?

A Mr. Coffey, they usually call in on the afternoon shift and the afternoon nurse would call me at home and ask me if they--who they could get to cover, that somebody wasn't coming in.

Now, we had a list of people to call and if they couldn't get them, then they would ask someone to come in or another girl to do a double in order to cover the floor.

I cannot specifically say it was Miss Fraser or this one

Q You mean the LPN would decide which particular girl to call?

MR. KAUFMAN: Objection.

MR. POLLACK: That is not the testimony of the witness.

JUDGE COHN: All right. I will sustain the objection.

Q (By Mr. Coffey) Who would decide which particular girl to call?

A I said we had a list of names for people who did per diem to relieve.

Q Yes.

A AAnd if they couldn't get anyone on that list, then they would ask someone on the 4:00 to 12:00 to stay over or call someone who had a night off on night shift and then we tried to give them another night off to make up for coming in.

Q And by "they," whom doyou mean would be doing all of this?

A Miss Allen was on 4:00 to 12:00.

Q She was an LPN?

A Yes.

Q All righ t.

If it happened on-- If someone on the 12:00 to 8:00 was required to do the same thing, who would that be?

JUDGE COHN: Do you mean--

Q Someone had to call someone in on the 8:00 to 4:00 shift; who would do that?

A I usually did it when I came in.

Q Did anybody do it on the 12:00 to 8:00 shift?

A Usually by the time they would call, I was there.

Q What time do you arrive in the morning?

A Between 7:00 and 8:00; 7:30.

Q Besides Mrs. Fraser has anyone ever been discharged for lateness other than she?

A Did I what?

Q Did you ever discharge anyone else for lateness other than Mrs. Fraser?

A Yes.

Q Who did you discharge for lateness other tha Miss Fraser?

A There as a girl on the day shift. I can't recall her name.

Q You can't recall her name?

A No.

Q Was it Mrs. Devore, Mrs. Wilson?

A Miss Wilson? Is that what you said?

Q Yes. I asked you--I was trying to help you recall, ma'am.

A Miss Wilson, no.

Q It was one other person you discharged for lateness?

A Yes. I can't recall her name. It was on the day shift.

Q And when was that that you discharged this person on the

day shift?

A Mr. Coffey, I couldn't tell you. I remember doing it.

Q Was it recent.y?

A No; I can't remember, but I remember doing it. It might have been in January. It might have been in December.

Q And this person on the day shift, was she an aide or an LPN?

A An aide.

Q Isn't it true that you had quite a problem with lateness on the night shift?

A A problem?

Q Yes.

A It was hard getting employees out in that neighborhood.

Q Could you tell us--

MR. KAUFMAN: Your Honor, I don't think the witness fully understood the question that Mr. Coffey asked at that point, maybe because of a hearing problem bec ause the answer--

JUDGE COHN:: The witness was not completely responsive but whether it was because she did not understand it or it wasn't--

MR. KAUFMAN: I don't know, but I just wanted to point out again to Mr. Coffey--

JUDGE COHN: I am sure Mr. Coffey will thank you.

MR. COFFEY: Thank you very much.

JUDGE COHN: All right. Let us proceed now.

MR.COFFEY: Okay.

Q (By Mr. Coffey) Were people often late on the night shift?

A Often late?

Q Yes.

A Some of them were late. Some people make a habit of it.

Q Some people made a habit of being late nn the night shift?

A Yes.

Q Mrs. Harrington, you say that Mrs. Fraser was late 31 times in all.

Have you any idea how often other people were late?

MR. POLLACK: Objection.

JUDGE COHN: Hold it now. What is the objection now?

MR. POLLACK: I withdraw it.

JUDGE COHN: Okay.

A I told you esterday, Mr. Hazell was frequently late.

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Mr. Williams--Mr. Williams used to be, I spoke to him and he came in.

Q Was Mrs. Allen often late?

MR. KAUFMAN: Mrs. Allen an aide?

MR. COFFEY: She is an LPN.

MR. KAUFMAN: But she is not on the night shift, according to the testimony we have been having.

You are talking about the night shift.

I object. It is a misleading question, your Honor.

JUDGE COHN: That's right.

Do you want to clarify that? You asked about the night shift. We were talking about the night shift, problems of lateness.

MR. COFFEY: I just shift gears a little bit to see what I could do, to be honest with you.

JUDGE COHN: I don't mind seeing, you know, you are seeing what you could do, that is all in good support, but with a certain amount of clarification.

Q (By Mr. Coffey) Did you have trouble with people as to latenezs on other shifts?

A Yes; occasionally.

Q Did you have trouble with Mrs. Allen as to lateness?

A May I explain about Mrs. Allen?

Q Well, did you have trouble with her or didn't you; let's start with that?

A She was late sometimes but many times she would come in and do double shifts when others weren't and she would get tired when we needed someone and I was always there until she came.

Q How about Mrs. Braithwaite, was often late, she was an aide?

A Mrs. who?

Q Braithwaite.

A Baitemore?

Q Braithwaite.

A I don't know--

JUDGE COHN: Braithwaite. B-r-a-i-t-h-w --

THE WITNESS: I don't know. She was on time.

Q She was on time?

A Yes.

Q Would you be surprised to hear that she was late more than twenty times in the same period that Mrs. Fraser was late?

A Mr. Coffey, you know, at four o'clock you are very, very busy. I run around and see that the people were in and sometimes it was after 4:00, you don't look at the clock, the doctor was usually there, and if

I saw the people I knew they were there. Miss Braithwaite is usually -- was usually there.

Q And you have no idea how many times--

MR. KAUFMAN: Objection. Are we talking about an evening shift employee again now?

JUDGE COHN: No. He is talking about Braithwaite. I don't know what--

MR. KAUFMAN: From what the witness is answering this seems to be an evening shift employee now.

JUDGE COHN: Yes, okay. That's right.

MR. KAUFMAN: Again, Mr. Coffey has switched gears.

JUDGE COHN: No, no, he had already switched a while ago when he got to Allen. Go ahead. This is cross examination.

Well, go ahead. What about Braithwaite?

Braithwaite is an afternoon employee; an evening employee?

THE WITNESS: 4:00 to 12:00.

JUDGE COHN: Right.

Q (Bt Nr, Coffey) Would you be surprised to know that she had more than twenty latenesses in the same period of time?

MR. KAUFMAN: Asked and answered. I think

the witness answered that.

JUDGE COHN: Overruled. I want to get this answer.

A Miss Braithwaite was there much longer than Miss Fraser.

Q How about Mrs. Mercado, you know her very well, don't you?

A Yes, she was very late and eventually she left because of traveling. I talked to her. She couldn't make it earlier.

Q But then Mrs. Braithwaite is still there, isn't she?

A She is, as far as I know.

Q Mrs. Allen is still there?

A Yes, she is--Allen I relieved.

MR. COFFEY: Your Honor, I think in order to--

Off the record.

JUDGE COHN: Off the record.

(Discussion off the record.)

JUDGE COHN: Back on the record.

You have a motion or an offer to make?

MR. COFFEY: Yes. General Counsel now--

JUDGE COHN: This has been identified.

You have an offer with respect to the

ask you a question.

In your experience do--do--have you ever looked at these time cards at all?

THE WITNESS: I look at them.

JUDGE COHN: All right. Just answer yes or no. I want to get this quickly, if you just answer my questions.

Did you ever look at the time cards at all.

THE WITNESS: Yes.

JUDGE COHN:: Okay. You do?

THE WITNESS: Yes.

JUDGE COHN: Now, in your experience do the time cards reflect the same information as to the time people punched in and out as the time record book?

THE WITNESS: Yes, normally.

JUDGE COHN: When you say "normally," when do--when would they not?

THE WITNESS: Sometimes somebody might forget to sign or punch but normally they are the same.

JUDGE COHN:: So the only time they would be different is that where one would be a blank, in other words, the time would usually be the same, within a minute or so.

THE WITNESS: Yes.

JUDGE COHN: Right.

on the record as to that and have offered the time cards as the best evidence available.

JUDGE COHN: All right.

So now he is asking for them.

Off the record.

(Discussion off the record.)

JUDGE COHN: Let's go back on the record.

Let the record show that respondent has produce a carton of time cards of all employees of the home for a period since the opening of the home until--when Mr. Ostreicher? .

MR. OSTREICHER: Until mid-May.

JUDGE COHN: Until approximately mid-May.

General Counsel has said at this point he is interested primarily in cards of certain--in the time cards of some of the LPNs an d then that during the course of a break for lunch he will be given an opportunity to go through the box and select the ones that he wants.

Okay. Let us proceed in the meantime now.

Mr. Coffey.

Q (By Mr. Coffey) Did you have any trouble with laten ess with Mrs. Payne, LPN Payne?

A She was late on occasion.

I spoke to her about it many times.

Q How many times was Mrs. Payne late, to your knowledge, between the opening of the home and--and the middle of February?

A I couldn't tell you the times, sir. I spoke to her and eventually let her go.

Q For lateness?

A For lateness and she wasn't too competent.

Q And you let Mrs. Mercado go for latness also?

A Miss Mercado left. I talked to her and she left.

Q Did you talk to her about lateness?

A Yes.

Q Did you talk to Mrs. Allen about lateness?

A Are you talking about Miss Rose Allen?

Q Mrs. Allen, the LPN on the 4:00 to 12:00 shift.

A Many times but I told you I relieved he--she relieved me, I waited until she came but during many of the times Miss Allen did doubles because Miss Russell's husband was sick and at the last minute she couldn't come in.

Q Did you talk to Mrs. Braithwaite about her lateness?

A Yes.

Q How many times did you talk to her?

A I spoke with her once.

Q You couldn't even remember Mrs. Braithwaite two minutes ago.

MR. POLLACK: Objection.

MR. KAUFMAN: Objection.

MR. POLLACK: Move to strike.

Q Isn't that true?

JUDGE COIN: Objection sustained.

She remembered Braithwaite.

Q (By Mr. Coffey) Who else did you have trouble with on the night shift besides Williams, Fraser and Hazell?

MR. POLLACK: In respect to lateness.

Q In respect to lateness?

A I had Miss Russell speak to all of the people on nights to get everyone in when they were late. I can't offhand remember all of the names.

Q. Did you have any trouble with Mrs. Robinson on the nightshift? Alma Robinson?

A Yes, she was spoken to

Q She was spoken to?

A Yes.

Q Individually or as part of the group?

A One morning I had a meeting and called them in and spoke to all of them.

Q You spoke to all the people about lateness?

A Yes.

Q On the night shift?

A I spoke with the general topic about being late.

Q You spoke to everybody?

A I spoke--

Q How long is the trial period that people have to go under when they--when they are hired on trial?

A I try to let them go within the 30 days.

Q Within 3 0 days?

A I try to. I don't always because I didn't have the help.

Q Was Mr. Hazell let go within thirty days?

MR. KAUFMAN: Objection.

A Mr. Hazell was hired temporarily until I could get a staff, Mr. Coffey.

Q Was Mrs. Terrell hired--was Mrs. Terrell hired--fired within 30 days?

A Not much longer.

Q How about Mrs. Fraser?

A No, she was there-- How long was she there? She was there about--oh--

Q You never spoke--

A About two and a half months.

JUDGE COHN: She was there what?

THE WITNESS: About two and a half months.

JUDGE COHN: Go ahead.

Q (By Mr. Coffey) Did you ever speak to Mr. Hazell about his lateness?

A When I asked Miss Russell to speak to them I asked

her to speak to them all besides Miss Fraser to speak to the other people who were late.

Q I see.

So when you asked Mrs. Russell to speak to Mrs. Fraser, it was at that time that you asked to speak to them all?

A If anyone else was late.

Q But you did not speak to Mr. Hazell about lateness yourself?

A No.

Q Prior to the time Mr. Hazell was discharged, was there an occasion when you said "Look, Mr. Hazell, you have got a split shift, will you change your shift?"

MR. KAUFMAN: Objection.

A He requested nights--

JUDGE COHN: Overruled.

Go ahead.

A (Continuing) He requested nights and he was hired with this condition.

Q Did you ever ask him if he wanted to work a non-split shift?

A As far as I know he could not work any--even over the holidays he had to have this Monday and Wednesday off.

Q Did you ask him if he would work a split--

A I did not ask him.

Q -- a straight shift?

A I did not ask him.

Q You did not ask him?

A No.

Q Did-- At any time prior to the day you laid Mr. Hazell off, did you tell him that he was going to be laid off?

A No.

Q How about Mrs. Fraser, did you ever tell her prior to the time she was fired that she was going to be fired?

MR. KAUFMAN: Personally?

MR. COFFEY: Personally or any other way.

A I did not--

MR. KAUFMAN: There's two questions in there now.

JUDGE COHN: Let's get it straight.

Q (By Mr. Coffey) Did you ever personally tell Mrs. Fraser she was going to be fired?

MR. KAUFMAN: Your Honor, while counsel--

JUDGE COHN: What was that?

MR. KAUFMAN: While counsel has the right to cross examine, he has been over Miss Fraser now at least 30 times on the same question and the same answer. And so

I object as to the cumulative nature.

JUDGE COHN: All right. I will allow it. Go ahead.

Q Did you ever ask--tell Mrs. Fraser she was going to be fired prior to the day you did it?

A No, Mr. Coffey, I don't threaten people.

Q Did you ever tell Mrs. Terrell she was going to be fired prior to the time you did it?

A No.

Q Did you ever have any occasion to warn Mrs. Terrell personally about anything?

A No, I can't remember.

Q You can't recall whether you did or not?

A I can't remember.

Q Did you ever see Mrs.Terrell neglecting patients?

A She didn't take good care of them. She is not a good aide.

Q Did you observe this?

A Yes.

Q How many times did you observe her neglecting patients?

MR. KAUFMAN: Objection to the word "neglecting."

The witness has answered what Miss Terrell did and did not use the word "neglect." She said she did not take good care of them; she was not a good aide.

JUDGE COHN: That's right. Sustained as to the form of your question.

Q (ByMr. Coffey) How many times did you see Mrs. Terrell not fulfilling her duties as to patients in a proper manner?

MR. POLLACK: Objection-- Withdrawn.

A When I made rounds and she was on duty.

Q What?

A When I made rounds when she was on duty.

Q Was it more than once?

A Yes.

Q Was it more than ten times?

A I am sure.

Q And how many times did you see her in an unkempt condition on the job with her uniform?

A Most all the time.

Q Well, how many times is that? Fifty times?

MR. KAUFMAN: Objection.

JUDGE COHN: Overruled.

A She wasn't there 50 days.

Q Fifty times?

A Practically every day.

Q Practically every day she worked?

A Practically every day.

Q And you said she had a snippy attitude.

How did she manifest that?

MR. KAUFMAN: Objection.

JUDGE COHN: Overruled.

A You know, when you say something, to give you sort of a quick retort, a snappy answer.

Q But you can't recall ever talking to her about any of these things?

A You know, I am sure I did, but I can't offhand point to it.

Q You are sure you did not-- Do you recall speaking to her more than once?

A I cannot tell you.

Q What?

A I said I cannot tell you.

Q Is the reason you can't tell me because you do not know?

A I can't remember.

Q You cannot remember ever talking to her at any time about any of the--

MR. KAUFMAN: Objection.

MR. POLLACK: Objection.

MR. KAUFMAN: Objection. That was not the witness' testimony.

JUDGE COHN: Yes.

Objection is sustained.

Q (By Mr. Coffey) Can you remember any instance in which you talked to Mrs. Terrell about any aspects of her performance?

A I think that I did but I can't remember any specific time.

Q Did you ever tell her she might be discharged if she did not improve?

A No.

Q You testified that you had Mrs. Russell give Mrs. Terrell or Mrs. Russell told you something about Mrs. Terrell; is that right?

A Yes.

Q When was that?

A She told Mrs. Russell she did not have to take orders from her.

Q And Mrs. Terrell--Mrs. Russell reported that to you?

A Yes.

Q And when was that? When did that take place?

A I guess maybe the end of December, the first of January. I'm not sure.

Q Did you-- Is that the basis for your charge that she was snippy?

A She couldn't -- She did not give good patient care, Mr. Coffey. She was a poor aide.

Q Mrs. Harrington, but as to your allegation against her that she was snippy, is that the basis of it, that Mrs. Russell reported that Mrs. Terrell refused to take orders.

MR. KAUFMAN: I object to the term allegation against her.

JUDGE COHN: Overruled.

A It was all-inclusive.

Q But that was included in it?

A Yes.

Q And when Mrs. Russell came to you did you have occasion to take--to go to Mrs. Terrell about this?

A No, I did not.

Q Did there come a time when you asked Mr. Hazell to work on consecutive days during the Christmas holidays, Miss Harrington?

A To work what?

Q On consecutive days instead of taking his normal days off.

A No, I did not ask him. He told me he was going to school, Mr. Coffey,and he had to have Monday and Wednesday off.

Q Right.

Was there ver a time when Mrs. Hazell was asked by you to work a Monday or a Wednesday?

A No. I don't recall ever asking him to work Monday or Wednesday.

Q Did Mr. Hazell ever work a Monday or a Wednesday?

A Possibly over the holiday but if so, I don't recall it.

Q Now, you say-- You testfied that you observed Mr. Hazell on occasion talking to other employees?

A Yes.

Q Is that a yes?

A Yes.

Q When was the last time before his discharge that you observed him doing that?

A He did this in the morning, just when I noticed it, when we were supposed to be serving patients in the dining room.

Q When was the last time you observed him doing that?

A I think the morning I discharged him I noticed it.

Q What was the last time before the morning you discharged him that you noticed it?

A Before then?

Q The day before.

A I noticed it wh en I came in and went down to the dining room to see if the patients were having breakfast

all right, and I noticed it a couple of times; a few times.

Q In the week prior to his discharge, how many times did you notice him talking to other employees?

A Mr. Coffey, I never expected to be sitting her and I don't remember exactly dates and times.

Q In the week prior--

A You know, it is hard, it is way back and you are busy.

Q I understand, Mrs. Harrington.

But in the week prior to his discharge, do you recall if it was more than once that you saw him?

A Yes, I did see him talking.

Q More than once?

A Yes.

Q During that last week-- Was it more than once?

A Yes.

Q During that last week-- Was it more than twice?

A I saw him the morning I discharged him and I also saw him a couple of times before that. Yes.

Q During that-- Mrs. Harrington, is there anything that Mr. Hazell did-- He was an orderly; is that right?

A Yes.

Q Mrs. Harrington, is there anything that Mr. Hazell

did as an orderly that any other orderly could not do?

MR. POLLACK: Could not do?

MR. COFFEY: Yes. Or did not do.

MR. KAUFMAN: Objection.

Are you talking about a special duty that he performed in the home?

MR. COFFEY: Yes.

MR. KAUFMAN: Or that he was able to leap t all buildings, did Mr. Hazell have any special duties over and beyond any other orderly?

A Not that I know of.

Q And approximately how many orderlies did you hire between the time Mr. Hazell was hired and the time Mr. Hazell was discharged?

A I couldn't tell you.

Q Was it more than twenty?

A Oh, no.

MR. KAUFMAN: Your Honor--

THE WITNESS: Four or five?

MR. KAUFMAN: This has been asked or answered.

Q Four or five?

A Possibly four or five.

JUDGE COHN: Overruled.

Q And do the orderlies do the same things as th e

aides do?

A Just about.

Q Why did you wait until January 13 to discharge Mr. Hazell?

MR. KAUFMAN: Objection.

JUDGE COHN: Overruled.

A I just noticed that morning he was not doing his work. He had been late, and I just called him in the office and let him go.

Q Had he been talking to employees all the way through his tenure? Hadn't you observed him talking to other employees--

MR. POLLACK: Objection.

JUDGE COHN: Let him finish the question.

Q Had you seen Mr. Hazell?

JUDGE COHN: Don't answer that.

Q Had you seen Mr. Hazell talking to employees on working time in October?

MR. POLLACK: I think the basis for the discharge as described by this.

THE WITNESS: I cannot remember.

JUDGE COHN: Hold it.

MR. POLLACK: Was that he attacked two employees and neglected his duties while he was talking. That aspect is totally left out of the question.

JUDGE COHN: Yes. I mean the question is kind of vague.

MR. COFFEY: All right.

JUDGE COHN: She could have him talk to employees out side the place or lunchtime.

MR. COFFEY: I will make it more specific.

Q Had you seen Mr. Hazell talking to employees and neglected his duties in October?

A I don't think so, sir.

Q How about November?

A No, it was later.

Q How about December?

A The end of December, I think.

Q How many times did you see him neglecting his duties while talking to employees in December?

A I just got through telling you I couldn't remember.

Q Was it more than once?

MR. KAUFMAN: Objection, your Honor, this has been asked and answered.

JUDGE COHN: She answered just a while ago about five times, I th ink.

MR. COFFEY: That was in relationto the last week he worked there.

Q (By Mr. Coffey) You saw him in December, can you recall how many times?

A I said I couldn't remember, Mr. Coffey.

Q How about in January, can you recall how many times did he do it in January?

A I think I just finished tell you when you asked me about when I discharged him in the week before.

Q Was he late in October?

A I really couldn't tell you.

Q Was he late in November?

A He was late more towards the end.

Q Was he late in December?

A Do you want me to look in the time book?

Q I wan t an answer. I want an answer, Miss Harrington, please.

MR. POLLACK: Objection.

JUDGE COHN: Hold it.

Do you recollect? Do you have any recollection that he was late?

THE WITNESS: I know he was late frequently, sir.

JUDGE COHN: But he is talking about in November and December.

THE WITNESS: I cannot remember the exact times he was late.

JUDGE COHN: But you said that the times that you do remember were towards the end of his employment?

THE WITNESS: Towards the end.

JUDGE COHN: All right.

Q (By Mr. Coffey) Do you check the time books every day as to lateness on the part of employees?

A Yes; I check the time books.

MR. KAUFMAN: Objection. Asked and answered ten times.

JUDGE COHN: Overruled.

Q (By Mr. Coffey) When you discharged Mrs. Terrell, did you tell her the reasonsyou discharged her?

A Yes.

When I called her I told her I wasn't satisfied with her work.

Q But that is-- Did you say anything else about her work?

A I can't remember.

I think I told her that she wasn't too-- You know, good, with patients or anything. And she said all right. And that was it.

Q Did you mention her sloppiness to her, her sloppy uniform?

A I think I did, sir.

Q What did you say to her and what did she say to you? Can you tell us the whole conversation, Miss Harrington?

A I just told you and she said, All right. That was the conversation.

Q Tell me the entire conversation, as you remember it, please.

A I called her and told her that I was letting her go. She did not give good patient care. And I am sure I told her she was untidy.

Q Aid you tell her anything else?

A And that was the end-- She said, "All right." That was the end of the conversation.

Q Did you tell her she had a snippy attitude?

A I cannot remember that I did one way or the other, Mr. Coffey.

Q Have you ever heard an aide by the name of Freulein (phonetic spelling) Brown?

A Yes.

Q And does she have a snippy attitude?

A I don't remember her having any problems particularly with Miss Brown.

Q Did Mrs. Russell ever tell you that Mrs. Brown had refused any orders?

A Had refused what?

Q Any of her orders or to take any of her orders.

A No. I don't recall it.

A When-- You say you discharged another girl

on the day shift for lateness whose name you do not recall?

A That's right.

Q How many times was she late?

A I can't remember, sir.

MR. COFFEY: No further questions, your Honor.

JUDGE COHN: Mr. Cantore?

MR. CANTORE: Just a few questions, your Honor.

CROSS EXAMINATION

Q (By Mr. Cantore) You testified, I believe, that you hired Mr. Hazell temporarily until you could get a staff; is that right?

A Yes.

Q Were you having problems getting a staff, Mrs. Harrington?

A I told you it was a little difficult to get people out in that neighborhood.

Q And that was the difficulty in getting the staff?

A Yes.

Q Were you ever referred people?

A On occasion.

Q By whom?

A Agencies.

Q Anybody else?

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A Yes.

Q And there was also some talk about other employees being late, aides and LPNs.

To your knowledge in the short period of time that Miss Fraser worked was anyone late more than Miss Fraser?

A No.

Q An d this -- And there was also some talk about your t alking to employees in connection with latenesses or things they did wrong.

Was there ever a formalized warning system at the home during this period of time?

A You mean those warning slips?

Q No, a formalized warning system that you had printed up to the employees that one warning, two warnings, thre, you are out.

A It is in the personnel policies.

Q What does that say?

A I don't know, but there is a whole personnel policy about continual lateness.

Q It says continual lateness is grounds for dismissal, does it?

A Yes.

MR. KAUFMAN: I have no further questions, your Honor.

MR. CANTORE: Could I have the witness' answer to that? I did not hear her; I did not hear a word she said.

JUDGE COHN: Do you want to read the answer with regard to--the last question?

Read it, please, Mr. Reporter.

(Whereupon, the record was read by the reporter.)

MR. CANTORE: Thank you.

MR. POLLACK: I have nothing, your Honor.

JUDGE COHN: Do you gentlemen have anything further?

MR. COFFEY: Just a few questions, your Honor.

JUDGE COHN: Well, on the redirect?

MR. COFFEY: Yes-- recross.

JUDGE COHN: Iknow recross, relating to the recirect?

MR. COFFEY: Righ t.

JUDGE COHN: Proceed.

RECROSS EXAMINATION

Q (By Mr. Coffey) What constitutes lateness at River Manor?

A People are supposed to be on duty in their uniform ready to work at the hour that they are supposed to

be on, likw 12:00 to 8:00 or 8:00 to 4:00. Eight o'clock they are supposed to be on duty.

Q If someone-- So when would-- If someone wrote down a figure when they arrived in the time book, when would you consider th e time written in to be a lateness?

MR. KAUFMAN: Objectinn.

JUDGE COHN: Overruled.

Do you understand the question?

THE WITNESS: Yes. I think so.

JUDGE COHN: Go ahead.

A Some people come in to work in their uniform and go right on duty. Most of the people. So when they sign in they just go to their--

Q Is a person who signs in at 11:58, is he late if he is on the 12:00 shift?

MR. KAUFMAN: Objection, not without more facts as to where they have to go, et cetera.

JUDGE COHN: Overruled.

A He is right. If he signs in at 11:58 in uniform and runs around on the first floor you will be there at midnight. But if you have to wait for an elevator you will be late.

JUDGE COHN: Or if you have to wait to change your clothes?

THE WITNESS: You will be late.

JUDGE COHN: How do you know which person-- if you, as the supervisor are looking at the book because you are not there at midnight, how would you know whether one guy or one person is 11:58 and late and another person is 11:58 and early?

THE WITNESS: Well, you did not-- We changed the system now they have to change in and out in their uniform and sign in and out with their uniform.

JUDGE COHN: What was the system about?

THE WITNESS: Before they used to sign in when they came in.

JUDGE COHN: I am talking about during the time people were terminated.

THE WITNESS: They had to sign in.

JUDGE COHN: If somebody signed in at 11:58, during those days, you did not--you really couldn't tell whether they were late or not?

THE WITNESS: You would actually have to see they were late.

JUDGE COHN: Why would you have to see they were late?

THE WITNESS: Because it was winter time, most of them had a coat and they went to the--they had to go to the locker to put their coat away.

JUDGE COHN: Then at what point would you

consider them not late, at what point before 11:58?

THE WITNESS: Usually people come in around ten minutes before their designated hour.

JUDGE COHN: Are you then saying anybody that came in?

THE WITNESS: N o.

JUDGE COHN: After 11:50--midnight, if it was the winter time particularly?

THE WITNESS: 11:55 they can make it.

Q(By Mr. Coffey) What was the rule used for Miss Fraser's latenesses which you counted up 31 laten esses, Mrs. Harrington?

MR. KAUFMAN: Objection.

JUDGE COHN: Overruled.

THE WITNESS: What do you mean?

Q What--

JUDGE COHN: Well, wait a minute.

I have to get going here.

You said Fraser had a number of latenesses. Was it 21, 31, whatever it was?

THE WITNESS: I think everyone of them were after midnight.

JUDGE COHN: Everyone you counted when you gave us a number before?

THE WITNESS: Yes.

JUDGE COHN: Were punch-ins, or sign-ins after midnight?

THE WITNESS: Right.

JUDGE COHN: In other words, for that purpose you did not consider 11:58?

THE WITNESS: No.

JUDGE COHN: Or 11:55?

THE WITNESS: No.

JUDGE COHN: All right; you have got an answer to that.

Q (By Mr. Coffey) Now, so it is my understanding that Mrs. Fraser's 31 latenesses constituted only those times that she clocked in or she wrote in on the time record book a time of 12:01 or more?

A I think that's right, sir.

JUDGE COHN:: Thank you for clarifying my question and answer that I got.

Q (By Mr. Coffey) And this was a standard that you used for all other people, if they came in at 12:01 or later, you considered them late?

A Yes. Everyone was treated the same as far as that was concerned.

Q If they came in at 12:00 or before, they were not late?

A If-- To be on time exactly you should be in there about

five minutes of. I am not pinpointing a minute or two, sir.

Q In counting up peoples' latenesses incident to their discharge, do you record those instances which came--where they signed in after the turn of the hour or after five minutes to the hour?

MR. POLLACK: Your Honor, the difficulty that we have is again a change of gear, in counting up do you record-- Now how can any witness answer that question, the record is made before the count, I assume.

JUDGE COHN: Let's-- I mean because you are going to beat this to death. The witness has testified according to my understand and if I am wrong you can tell me, that she would consider people coming in a little before 12:00, maybe even 12:55, maybe in some instances 12:50, 11:50.

JUDGE COHN: 11:50 as late.

However, she further testified that in counting up the latenesses of Miss Fraser she only considered those that were after 12:00.

Now, what are you asking?

Q What about other employees, does she count up their latenesses only after 12:00 or just from 11:55, we want to know how you -- how to address ourselves to their system of--

JUDGE COHN: She already told you that she considers those that come in a little bit before 12:00 as being late.

MR. COFFEY: All right.

JUDGE COHN: That doesn't mean that she fired them.

Q (By Mr. Coffey) When you say that no one was late more than Mrs. Fraser, are you saying that no one came in after 12:00 more than Mrs.Fraser or after five minutes to the hour more than Miss Fraser?

MR. KAUFMAN: Objection.

JUDGE COHN: Overruled.

A I am all muddled.

JUDGE COHN: Look, Mr. Coffey--

MR. COFFEY: I think that this os a good point here, your Honor.

JUDGE COHN: Can't you make a distinction between what she considers a person to be late and what she actually used for the purpose of firing?

Maybe she is going to be a little more lenient when it comes to firing people, but generally speaking she considers somebody coming in around five to 12:00 or thereabouts as being late because of the time it takes them to get on the uniform or whatever.

Q (By Mr. Coffey) In considering whether a person is fired, you do not--

MR. KAUFMAN: Is what? Fired?

Q To be fired, you don't consider any so-called latenesses before the turn of the hour; is that correct, Miss Harrington?

MR. KAUFMAN: Objection.

JUDGE COHN: Overruled.

A With Miss Fraser I am sure I took them all after midnight,sir.

Q When you say no one was late more than Mrs. Fraser, did--

A I don't recall that there were, no.

Q Now when you say that, do you mean that no one was-- came in, after 12:01 more than Mrs. Fraser or after 11:55 more than Mrs. Fraser?

A I don't count 11:55 with Miss Fraser, Mr. Coffey.

Q So therefore it is your testimony that no one came in after 12:00 midnight--

MR. KAUFMAN: Objection. What her testimony is.

JUDGE COHN: What her testimony now will be; all right.

Objection is overruled.

A You asked me what time someone had to be on duty and

I told you they shold be in at a certain time to be on their floor at their hour so they wouldn't be late.

Q Right.

A And I said 11:55, 11:50. Now with Miss Fraser I did not count that. After midnight I counted it.

Q Yes.

And you also said that no one was late more than Mrs. Fraser?

A I can't recall that there were anyone more late than Miss Fraser.

Q What standard did you use to make that statement?

A By looking at the book.

MR. KAUFMAN: Your Honor, I would like to make--

JUDGE COHN: She answered it. She said she looked at the book.

MR. KAUFMAN: It is becoming argumentative.

MR. COFFEY: It is not becoming argumentative.

JUDGE COHN: Okay; I will overrule the objection.

Q Can you explain to us what you meant when you said no one was late more than Miss Fraser?

MR. KAUFMAN: With respect to this question, my question to a witness in a similar period of time, now

JUDGE COHN: -- people?

She fired one other person, for example.

MR. COFFEY: All right.

Q (By Mr. Coffey) You fired someone in the day shift; is that right?

A Yes, I did.

Q For lateness?

A Yes.

Q Was Mrs. Fraser late more often than that person?

A Yes, sir.

Q Was Mrs. Fraser late more often than Mr. Hazell?

A Yes.

Q When you say Mrs. Fraser was lte more often than Mr. Hazell, do you mean to say that she came in after five minutes to the hour more often than Mr. Hazell?

MR. KAUFMAN: Objectinn.

JUDGE COHN: Objection overruled.

A I just got through telling you I did not count Miss Fraser before the hour.

MR. COFFEY: Okay. I think that answers my question sufficiently.

JUDGE COHN: All right.

Is there anything further from any of you people of this witness?

(No response.)

JUDGE COHN: Hold it. I may have a couple of questions.

EXAMINATION

Q (By Hearing Officer Cohn) This list that you just last referred to as a per diem list, that would be a list of people who worked on call or part time?

A Yes. Who can come in and help out.

Q Who can come in and fill in?

A Yes.

Q Now you prepared that list?

A Yes.

Q Are the names listed in any particular order?

A They were in a little book, a staff book.

Q They were in a little book?

A Yes; in the staff room.

Q Are they all alphabetical?

A In alphabetical order, but the per diem are under per diem, so they would know. Under "P."

Q Oh, I see. In other words, regardless of their name, they are in the book under the letter P?

A Yes.

Q Per Diem?

A Yes.

Q Now, did you give any instructions to the LPNs like--well, who would do some of the calling, Allen or maybe

Mercado?

A To call?

Q Yes.

A They usually called me and asked me who they should call.

Q They asked you for a name?

A Who they should call. I knew the names.

Q That is what I mean.

A And then if they could not get them, they would call me back and ask if it was all right if someone could stay over or call somebody in on the night off.

Q What I am trying to say is, or trying to find out, is would you tell them to just go to the per diem list and make a call, or would you tell them to call Miss So and S or Mr. So and So as the case may be?

A Well, we did not have too many and usually I knew who would do each shift and I would tell them.

Q So you would give them a specific name?

A Yes.

Q Was there any time when they would be sort of at liberty to call any name on the list that they wanted?

A If they couldn't reach me at home I suppose they had to call, you know, whoever they could get.

Q Normally they would reach you and you would say,"Call Miss So and so because I am pretty sure she would be willing

to go in?

A Yes.

Q Okay. One other area.

Do yuu remember you were asked certain questions about those pink checkoff--what we call checkoff cards, the pink one with the white one on top?

A Yes.

Q All right.

I am showin you a card that has been marked Party in Interest 5 in evidence. And I just want you to look at that card and as the form of it--are you familiar with that kind of card?

A I seen them.

Q You have seen them?

A Yes.

Q All right.

Now, there has been some testimony here that when the night shift began sometime in December, the LPNs said that she had instructions-- Let's put it this way: Russell said that when she came on the shift Allen told her that there was some union cards on the desk and to give them to the people to sign it if they wished.

Now, would you have any idea as to how those cards got to the desk?

Now I am referring to this card that I just showed you, to this type of card.

MR. KAUFMAN: Your Honor, I would like to object to this line of questioning and moreover I would ask that before you ask that question you differentiate to the witness that there is a distinct difference between this pink--

JUDGE COHN: Did I at the outset--

MR. KAUFMAN: With the white attachment and this other card and this is the card she identified as given out in January as opposed to this card.

JUDGE COHN: That is why I showed her this card.

Q (By Hearing Officer Cohn) All right. This is the card that you originally were asked about by Mr. Coffey.

The pink card that had a white attachment.

Now I am showing you this card. Do you see the difference?

A Yes.

Q Now you told me that you-- You know what these cards are and you have seen them before?

A Yes.

Q All right.

Now I am referring you back to sometime in December when as I suggested or as I told you Miss Russell

stated that Allen came on--that when she came on one night Allen told her there was some cards--this was in December--there was some cards on the desk, and that they were for people to sign them if they wanted to,

Now, do you know how those cards came on--came to be on the desk?

Do you understand me? And I am talking about this card now (indicating), not this, this occurred in January. I am talking about back in December.

A I think Miss Mercado left these cards for people.

MR. POLLACK: May I have that answer?

MR. KAUFMAN: Who?

JUDGE COHN: She said she thinks Miss Mercado left those cards for people.

MR. KAUFMAN: Is she talking from her knowledge or what she thinks?

JUDGE COHN: She thinks.

THE WITNESS: I think Mercado left them.

Q (By Hearing Officer Cohn) How is it that you think Mercado left them?

A Because originally the--she met the union people and she was taking care of it, I understand, I don't know anything about it.

Q How do you understand?

A How would I understand?

Q Yes, I understand she met-- How do you understand that?

A I introduced Miss Mercado--_ asked her if she was interested in meeting some people from the union. She said yes.

I introduced them to her.

Q To what people?

A To a couple of people from 531.

Q Do you know their names?

A No; not offhand.

Q How did you know they were from 531?

A I was introduced to them.

Q By whom?.

A Administration.

Q Whose administration?

A Mr. Ostreicher.

Q Introduced you to some people who were from 531?

A 531.

Q And you don't know the names of the people from 531?

A Mr. Valentino.

Q Mr. Valentino?

A Yes.

Q How many people?

A There was another man there.

Q All right. Then what did you do when you were introduced?

A I gave him a lecture that I wasn't interested in the union and they asked me if there were any LPNs around and I told them Miss Mercado, and I asked Miss Mercado--I went to Miss Mercado and asked if she was interested, and she said yes, and I introduced her and that was the end of it. So I gather she left those cards.

Q And this was when?

A I haven't the faintest idea, sir.

Q November, December, when you were introduced?

A November, December; I don't know.

Q Now in connection with the--with these pink cards, your testimony before, you said that you put th em for night shift people anyway.

A Yes.

Q You put them in with the pay envelopes?

A Yes.

Q Did you do the same thing with the other people?

A No. I don't remember doing that.

Q Did you give them to Mrs. Mercado?

A Maybe M i s s Mercado did.

Q Yes. Did you ever receive any number of these blan k cards, you know,just--

A Did I receive th em?

I am not giving him an advantage but I am letting him ask questions.

Go ahead.

Q (By Mr. Coffey) Mrs. Harrington, where were you when you were introduced to the Local 531 gentlemen that were introduced to you by administration?

A Where was I?

Q Yes.

A I introduced Miss Mercado, I think, outside--

Q No. Where were you when you were introduced to the people from 531?

A She? Where was she?

Q Where were you.

A I was down my end of the corridor. I went and got Miss Mercado and brought her down outside my office and then I introduced her and I went in my office and closed the door. I don't know where they wen t.

Q Who was it that introduced you to the men from 531?

MR. KAUFMAN: Objection. It has been asked and answered.

JUDGE COHN: Objection sustained.

Q Was it M r. Ostreicher, Jr., that asked you or--

MR. KAUFMAN: Objection.

Q -- or Mr. Ostreicher Sr. that asked you?

JUDGE COHN: Overruled.

Q That introduced you to these gentlemen?

A Mr. Ostreicher.

Q Is Mr. Ostreicher you are talking about the gentleman who is in this room?

A Yes.

Q He is the administrator of the home?

A Yes.

JUDGE COHN: The gentleman-- Is this Mr. Ostreicher Jr., or Senior?

MR. KAUFMAN: That is Marvin Ostreicher.

JUDGE COHN: Oh, Marvin Ostreicher. There is no junion and senior?

MR. KAUFMAN: There is no junior and senior.

JUDGE COHN: I did not think there was.

MR. COFFEY: All right.

Q (By Mr. Coffey) What would-- What were Mr. Ostreicher's words to you when he introduced you to the gentlemen??

MR. KAUFMAN: Objection.

A Oh, I don't remember.

JUDGE COHN: Overruled.

Wat was your answer?

THE WITNESS: I don't remember.

JUDGE COHN: All right. I did not hear you.

Q (By Mr. Coffey) How long was the conversation that took place at that time?

MR. KAUFMAN: Objection.

JUDGE COHN: Overruled.

A Mr. Coffey, I told you I was introduced to them. I gave them a lecture that I wasn't interested in the union, did not belong to the union, and they asked me if I could get them some--a practical nurse.

Q And when they asked you if you could get them a practical nurse, what did you do then?

MR. KAUFMAN: Objection. Asked and answered, your Honor.

JUDGE COHN: Sustained. I am not going to go through this all day with you now.

MR. COFFEY: All right.

Q (By Mr. Coffey) When you went to Mrs. Mercado, what did you say to her?

MR. KAUFMAN: Objection, asked and answered again, your Honor.

You asked it and Mr. Coffey asked it.

JUDGE COHN: Overruled.

MR. POLLACK: And the witness volunteered it once.

A I went to Miss Mercado and asked her if she was interested in the union and I--she said yes, and I brought her down and introduced her and that was all I know, sir.

Q Was that the entire conversation between you and Mrs. Mercado?

A That's right.

Q Okay.

Now you asked her-- Are you interested in the union, right?

MR. KAUFMAN: Objection. We have just had this, your Honor. The witness just testified to it. Now we are having it for a fifth time.

JUDGE COHN: Hold it. Let me get that question again.

(Whereupon, the question referred to was read by the reporter.)

Q Now--

JUDGE COHN: Did you get an answer?

MR. POLLACK: The question was objected to as being repetitive, redundant.

MR. COFFEY: I wasn't even finished with my question.

JUDGE COHN: It sounded like a full yes.

MR. COFFEY: No, no; I was in the middle of something else.

MR. POLLACK: I object to the summary of testimony in a question.

JUDGE COHN:: All right. Let us-- I am sustaining then just for the purpose of getting rid of it. I am sustaining the objection to that question.

Do you want to ask a question?

MR. COFFEY: Yes.

JUDGE COHN: Let us start over again.

Q (By Mr. Coffey) Mrs. Harrington, how far away from the gentlemen from531 were you when you were talking to Mrs. Mercado?

MR. KAUFMAN: Objection.

JUDGE COHN: Overruled.

MR. KAUFMAN: At what time?

THE WITNESS: All I did was introduce them. That's it.

Q How far--

A And shut my door.

Q How far away were you from--did you have to go--

JUDGE COHN: She introduced them. I assume they were in her presence, that is not my understanding.

Q Did you have to get Mrs. Mercado?

A Yes, she was in the staff room.

Q And how far away from where the men from 531 were was the staff room?

MR. KAUFMAN: Your Honor, that is why I said at what time.

JUDGE COHN: Overruled. Go ahead.

Q (By Mr. Coffey) Go ahead.

A She was in the staff room and I was down the other end.

JUDGE COHN: You left the men to go and get Mrs. Mercado?

A Yes.

JUDGE COHN: How far did you have to go to the staff room?

A The length--almost--half the building.

Q Half the buildint?

A Yes.

Q When you got to Mrs. Mercado and you told her you wanted to meet people, did you tell her--

MR. KAUFMAN: Objection.

MR. POLLACK: Objection.

MR. KAUFMAN: That was not the testimony.

JUDGE COHN: Gentlemen, don't shout.

MR. POLLACK: Your Honor, this is totally improper.

JUDGE COHN: Will you please-- Sustained.

Will you please ask a proper question?

Q (By Mr. Coffey) What were your words to Mrs. Mercado, Miss Harrington?

MR. KAUFMAN: Objection. This is the sixth time now, your Honor, that he has asked the same question of this witness.

JUDGE COHN:: I will let her answer it once more.

Q (By Mr. Coffey) -- that you used when she accompanied you back?

MR. KAUFMAN: The witness testified she had a conversation with Miss Mercado when she met her, there was no testimony that she ever had a conversation with Mrs. Mercado when they were accompanying her back and that presumes a fact.

MR. COFFEY: No.

Q How did you get Mrs. Mercado with you?

A I told her I asked her if she would like to meet someone from the union and she said yes. So she came down.

I walked ten times faster than Miss Mercado. I am down at the end of the corridor before she is halfway through.

Q Did you tell her to come along with you?

A She came along with me.

MR. KAUFMAN: Objection.

JUDGE COHN: She answered--

MR. KAUFMAN: Did,what did she--

MR. POLLACK: If you want to know why we raise our voice in our objection the witness is very fast and the answer gets in before your ruling and we purposely tried to get -- to make sure the reporter does nt get the answer so our objection would be meaningful, ther wise it is total nonsense.

JUDGE COHN: Miss Harrington, when you are asked a question and if you hear any kind of an objection or eveb tge furst syllable--

THE WITNESS: I will stop. I won't answer.

JUDGE COHN: Don't answer.

Okay.

Q (By Mr. Coffey) When you got back to the gentleman from 531 with Mrs. Mercado, what happened then?

MR. POLLACK: Objectinn.

MR. KAUFMAN: Objection.

Again we have been through this.

JUDGE COHN: Objection overruled.

A I told you. I introduced her and that was it. I went into my office and shut the door.

Q What was the nature of your introduction; what did you say?

A What do you say when you introduce people?

Q Well, I would like to know.

A I just said This is Miss Mercado. Andthat's it. And I went into my office and shut the door.

Q Did you introduce the gentlemen to Miss Mercado.

A I said, This is Miss Mercado, and that was it. I went into my office and shut the door.

Q You did not say to Mrs. Mercado, These are the gentlemen from 531?

MR. KAUFMAN: Objection.

MR. POLLACK: Objection.

JUDGE COHN: Overruled.

MR. KAUFMAN: Can you have the question read back?

THE WITNESS: I just said This is Miss Mercado That's it.

Q Do you know how long Mrs. Mercado was with the gentlemen from 531?

A I have no idea, sir.

Q Do you know-- As you introduce them did you see where they went?

A Did you what?

Q Did you see where they went?

A No. I went in my office and shut the door.

Q Approximately what time of the day was it that you spoke to Mrs. Mercado?

MR. KAUFMAN: Objection.

JUDGE COHN: Overruled.

THE WITNESS: I haven't the faintest idea.

Q Was it on her shift?

MR. KAUFMAN: Objection.

JUDGE COHN: Overruled.

A On Miss Mercado's visit?

Q Yes.

A She was there, so it had to be on her shift.

Q Did you subsequently have any conversation with Mrs. Mercado about her meeting with the people from 53?

MR. KAUFMAN: Objection. Outside the scope of your examination.

MR. POLLACK: Even your examination.

JUDGE COHN: Sustained.

MR. COFFEY: No further questions.

JUDGE COHN: Mr. Cantore?

MR. CANTORE: No qestions, your Honor.

MR. COFFEY: I have no further questions.

AFTER RECESS

2:45 o'clock P. M.

JUDGE COHN: Let us go back on the record.

The hearing will be in order.

MR. COFFEY: General Counsel offers as General Counsel's 24--

JUDGE COHN: Before you do that, I understand you are going through th e time cards that were produced by respondent pursuant to your subpoena?

MR. COFFEY: Yes, your Honor.

JUDGE COHN: From those cards you apparently selected certain time cards of certain employees; is that correct?

MR. COFFEY: Yes, your Honor.

We have selected the time cards of Allen-- Rosenthal from 9/15 through 2-- -- 9/15/74 to 2/5/75, although there are further time cards, it is within the period that they--that we have the time record book that is important, so we just chose those.

I ask that these be marked as General Counsel's Exhibit 24 for identification.

JUDGE COHN: Well, 24A through what--how many of Allen's cards do you have? Count it. A,B,C.

MR. COFFEY: 24V.

JUDGE COHN: Time cards of Allen?

MR. COFFEY: 24A through 24V.

JUDGE COHN: A through V?

MR. COFFEY: Right.

JUDGE COHN: Is there any objection to those?

MR. POLLACK: We haven't seen them.

JUDGE COHN: All right.

MR. COFFEY: Your Honor, it should be noted that there is no time card for Miss Allen, the week of 12/7. Nor was there any time card for the other two employees we have abstracted cards for for that week, your Honor.

JUDGE COHN: For the week of December the 7th?

MR COFFEY: Right.

JUDGE COHN: Off the record.

(Discussion off the record.)

(Thereupon, General Coun sel's Exhibits 24A through 24V were marked for identification, as of this date.)

JUDGE COHN: All right, gentlemen. Back on the record.

MR. KAUFMAN: No objection.

MR. POLLACK: No objection.

JUDGE COHN: 24A through V are received.

(Thereupon, General Counsels' Exhibits 24A through 24V for identification, received in evidence, as of this date.)

MR. POLLACK: From the point of view through relevancy you may be comparing apples and oranges. Allen is an LPN and may not be held to the same standards as aides.

JUDGE COHN: This is a matter beyond--

MR. POLLACK: I understand that I don't waive the relevancy of it.

JUDGE COHN:: Of course not. You are not waiving any of these things.

MR. COFFEY: General Counsel would like to introduce the time cards of Estelle Payne between 9/29/74 and 2/15/75, with the exception of the card for 12/7 which is not in there.

JUDGE COHN: What are they marked--

M R. COFFEY: That will be 25A to T.

(Thereupon, General Counsel's Exhibits 25A through T were marked for identification, as of this date.)

JUDGE COHN: What is 26?

MR. COFFEY: The cards of Clara Mercado, from 9/22/74 through 1/4/75.

JUDGE COHN: They will be marked 26A through what?

MR. COFFEY: 26A through--with the exception of the card for 12/7 -- A through O.

(Thereupon, General Counsel's Exhibit 26A through 26-O marked for identification, as of this date.)

MR. POLLACK: Your Honor, I would object to the introduction for the cards of Estelle Payne. Apparently if we can interpolate from the exhibit and that which witnesses have already testified to, Payne must be a per diem LPN, which means obviously that she did not necessarily know in advance to come in that day or the same number of hours in advance as did anyone else. And if that-- If that is the way -- if that is the case, this would make a very poor standard of comparison.

MR. KAUFMAN: I will join in that appeal.

JUDGE COHN: Hold it. Let me make my ruling.

I am going to--I will receive it and

then of course if you people may want to introduce evidence--

MR. POLLACK: Your Honor, now the burden is shifting to us. That is not our burden. That is the counsel for the General Counsel's burden. He is introducing the document.

MR. KAUFMAN: He has the burden of indicating or making sure that they represent what they purport to be representing. We do not have the burden of overcoming them.

MR. POLLACK: It has nothing to do with authenticity.

JUDGE COHN: It has no relevancy if she is not the same kind of employee.

MR. COFFEY: Well, certainly--

JUDGE COHN: Well, look, if you can establish, you know, who it is and subject to whatever testimony we get on that, I will accept them or not accept them.

So let us hold Payne in abeyance, 25A through T, as not being received at this moment.

It is true it is unfair for me to shift the burden to them to show Payne is a regular employee.

MR. COFFEY: Whether she is a regular employee or not, she is supposed to come in on time, I presume.

JUDGE COHN: Oh, okay.

MR. KAUFMAN: I have no objection to these cards, with the understanding that in reading the--

JUDGE COHN: That is Mercado's cards?

MR. KAUFMAN: Yes. But with the understanding that in reading these cards one has to interpolate the shift that they are on.

In other words, your Honor, for the purposes of Miss Mercado, the bottom punch is her sign=in time and the top punch is her sign-out time since she was the morning LPN.

MR. COFFEY: That's all right.

JUDGE COHN: Is that always the case?

MR. KAUFMAN: That would be the case, yes.

MR. POLLACK: The same with this?

MR. KAUFMAN: And the same with Rose Allen.

JUDGE COHN: Let me put it this way: Wait a minute. Let's go with Mercado first.

These cards indicate, the first day indicates the day of the week. FR means Friday.

MR. KAUFMAN: Right.

JUDGE COHN: It is our understanding that the bottom of these two days--days, rather, the bottom punch - in for Friday and the bottom punch-in for

Thursday, et cetera, is the time that she punched in for work and the top one is the time she punched out; is that correct?

MR. KAUFMAN: Unless, of course, she had been working on a different shift on a day.

MR. CANTORE: Yes, I -- it does.

JUDGE COHN: Wait a minute. We are talking about Mercado. I don't want to get this confused.

MR. COFFEY: On the bottom the first punch it says AM, that means, AM, and the P means PM, so it can be seen on the first card that the first punch-in is 8:02 and the first punch-out is 4:11.

JUDGE COHN: The bottom punch on each card will determine when she came in and that will show you what shift she is working on.

MR. POLLACK: That's right.

JUDGE COHN: All right.

So I think we understand.

MR. KAUFMAN: All right.

JUDGE COHN: That would be so in any case since the week starts at the bottom.

MR. CANTORE: Perhaps--

MR. KAUFMAN: Righ t. Except when you get to Rose Allen the P is on bottom and the A is on top.

MR. POLLACK: She worked an afternoon shift.

MR. KAUFMAN: She worked a 4:00 shift, 4:00 to 12:00.

JUDGE COHN: Sure.

MR. COFFEY: She also worked other shifts, too.

MR. KAUFMAN: And she also filled in for others, if I remember, Miss Harrington said she worked double shifts covering for instance, Russel, and there were overlaps and Miss Harrington covered in those instances.

JUDGE COHN: Right.

As I look at the cards, I don't see any problem.

All right. So, exhibits--General Counsel's Exhibit 26A through Q are received and 25A through T.

MR. COFFEY: Is it--A through T?

MR. CANTORE: O.

JUDGE COHN: No, wait a minute. I said 26A through O are received, that is Mercado.

25A through -- ten of which are time cards of Payne have not been received and those that are the ones that I said I would afford the General Counsel at some point an opportunity to tell--to determine who Payne was in terms of whether it is a regular fill-in or per diem or whatever.

Now you can call another witness.

MR. POLLACK: This witness affirms, your Honor.

JUDGE COHN: All right.

Come here; we will affirm him.

Whereupon,

ABRAHAM ZEHNWIRTH

having duly affirmed to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

DIRECT EXAMINATION,

Q (By Mr. Kaufman) Mr. Zehnwirth, by whom are you employed?

A River Manor, RHRF.

Q In what capacity are you employed?

A I am a bookkeeper.

Q Were you a bookkeeper there during the period September through January--September '74 through January '75?

A Yes, I was.

Q Did there come a time in January when you had any conversations with employees relative to signing a card?

A Yes.

Q How many cards were there?

A How many cards employees sighed?

Q No, no. How many cards dis you ask employees to sign.

A Oh. There were two kinds.

Q Mr. Zehnwirth--

MR. KAUFMAN: Would you mark that for identification, please?

JUDGE COHN: Is he referring to two kinds of cards?

MR. KAUFMAN: Right.

(Therejpon, Respondent's Exhibits 13A and B marked for identification, as of this date.)

JUDGE COHN: Off the record.

(Discussion off the record.)

JUDGE COHN: Back on the record.

Q (By Mr. Kaufman) Now, you testified that in January you gave employees cards to sign.

A Right.

Q I show you Respondent's Exhibits 13A and B, which are a wh ite and pink card--white and pink slips of paper written on the top, "Application and Checkoff Authorization Blank."

Is that one of the things you gave the employees?

A Yes, it is.

MR. KAUFMAN: Would you mark that, please?

(Thereupon, the document referred to marked Respondent's Exhibit 14 for identification, as of this date.)

Q (By Mr. Kaufman) Now, I show you Respondent's 14 for identification, which is entitled Sick and Welfare, Local 531.

Did you also give the employees that card?

A Yes.

Q Were those the only cards that you gave employees?

A Yes.

Q Is the period in January -- you testified about January -- was there any other time other than January when you gave employees cards?

A No, this was in the beginning of January, I believe, sir.

Q And that is the only time you gave cards?

A Right.

Q Were there any other type of cards that you ever gave to employees to sign?

A No

MR. POLLACK: I have nothing.

JUDGE COHN: Okay.

CROSS EXAMINATION

Q (By Mr. Coffey) Mr. Zinwirth, as the bookkeeper at River Manor, are you the only bookeeper?

A At this point not.

Q Between the time the place opened and the 13th of January were you the only bookkeeper?

A I was the only bookkeeper.

Q And was there anybody else in the Bookkeeping Department besides yourself?

A No.

Q And during that time did you take care of the accounts receivable?

A Yes.

Q And the billing?

A Yes.

MR. KAUFMAN: Can you wait one second, your Honor?

I don't know whether we admit or denied Mr. Zehnwirth is bookkeeper and/or supervisor. If we admitted to being a supervisor then I will object to the question.

I will certainly be willing to stipulate that Mr. Zehnwirth is a part of management rather than a

supervisor?

MR. COFFEY: He is a managerial employee.

MR. KAUFMAN: He is a managerial employee.

JUDGE COHN: Would you say he is an agent within the meaning of 1002.11?

MR. KAUFMAN: If he is a managerial employee, supervisor in the U. S. Supreme Court decision it holds that managerial would be the same as supervisory, I would assume he is an agent of ours.

JUDGE COHN: Okay.

MR. COFFEY: That's good enough for us.

JUDGE COHN: Okay.

Now you have established that.

Q (By Mr. Coffey) Is one of your duties to give out paychecks?

A Yes.

Q Who did you give paychecks to, Mr. Zehnwirth?

A Well, I give it to the employees.

Q Do you give out paychecks to employees in the kitchen?

A I would give paychecks--

MR. KAUFMAN: Objection. I don't understand the question whether Mr. Coffey is talking about giving out checks in the kitchen or to kitchen employees.

MR. COFFEY: Withdrawn.

Q Do you give out paychecks to kitchen employees?

A Yes, I do.

Q Do you give out-- Did you give out paychecks as a rule to Mr. Normil?

A Yes, I did.

Q And did you give out paychecks to Mr. Cox?

A Cox, yes.

Q Mr. Vincent Cox?

A Yes.

Q Now, on the day that you gave out these slips of paper, Respondent's 13Aand B, was that on a payday?

MR. POLLACK: If your Honor, please, I am not sure where we are going. It seems to me we are guilding a lily; it is an unfair labor practice and I understand 8(a)(2)--apparently Mr. Coffey is going into whether or not it was a quid pro quo, sign the slip or you won't get your paychecks.

It is completely irrelevant at this point.

You have a merchandise figure, for lack of a better word of 8(a)(2).

JUDGE COHN: He gives out checks.

MR. COFFEY: We have some 8(a)(1)s here, too, your Honor, we want to go into.

MR. KAUFMAN: What 8(a)(1) is Mr. Zehnwirth accused of?

JUDGE COHN: All right.

Let's go back on the record.

Mr. Coffey.

Q (By Mr. Coffey) Mr. Zehnwirth, was it a payday on which you gave out these slips, Respondent's 13?

A Most probably.

Q Did you give them out with the paychecks?

A Yes.

Q And who gave you the slips to give out with the paychecks?

A I was given those slips by the administration.

Q Who in the administration gave you the slips?

A Most probably Mr. Ostreicher, I would believe, sir.

Q The Mr. Ostreicher in the room, the Administrator?

A He is present here?

Q Yes.

A Yes, I believe so.

Q And when you gave out these slips to the employees, sir, did you give them their paychecks first?

A No.

Q What did you tell them when you asked them to sign these slips or what were your words t o them when you gve the slips out, in other words?

A When I gave the checks what I told them.

Q When you gave them yhe slips?

A I told them they had to sign the slips.

Q You told them to sign them?

A Right. Or fill them out or whatever.

Q Did you say anything to them in reference to their checks?

A What do you mean in reference to their checks?

Q If you don't understand the question I will rephrase it for you.

Mr. Zehnwirth, what did you say when you gave the slips out to the people?

A I asked them to fill these slips out.

Q Now, when you asked them to fill these slips out did you say anything else to them?

A I mean, what should I say to them?

Q I am asking you what you said.

A I had no reason to--

JUDGE COHN: No, he asked you did you say anything else to them so the answer is I did not say anything else or yuu did say anything.

A I mean if he asked me what it is for--

JUDGE COHN: No. You are supposed to answer yes or no. Did you say anything else?

THE WITNESS: I mean I can't remember what I told them, whether I told them anything else, unless

I have been asked the question.

JUDGE COHN: You are asked a question.

Look, Mr. Zehnwirth, you said that you gave them the slips and now I am referring to 13A and B and probably 14, and you told them to fill them out; right?

THE WITNESS: Yes.

JUDGE COHN: That is what you told them?

THE WITNESS: Yes.

JUDGE COHN: All he is asking you is did you say anything else, he is not asking you what you said. He is just asking you did you say anything else, yes or no.

THE WITNESS: Unless I was asked a question, probably I would have answered what I was asked. I mean, what is there to say?

MR. COFFEY: All right. Let's be candid now.

Q (By Mr. Coffey) Mr. Zehnwirth--

MR. KAUFMAN: Objection.

JUDGE COHN: Well, he is not being uncandid, let's put it that way.

Q Mr. Zehnwirth, did you tell people that they had to sign?

A I'm sorry.

JUDGE COHN: Hold it.

Q -- Had to sign these slips before they can get their checks?

A Yes.

Q Did you tell them that if they did not sign their slips, these slips, they wouldn't get their checks?

A If I told them if they did not sign? Most probably.

Q How many people is it that you gave such slips to?

A To all the employees.

Q Well, can you give us a number?

A Well, at that time I think there were maybe--maybe forty. This is a rough statement. I don't have my records in front of me and I am just recollecting.

Q Okay.

We have a number of--

Did you give one to Mr. Cox?

A Was he employed at that time?

Q He was.

A If he was I probably gave him one.

MR. POLLACK: M a y we be off the record, your Honor?

JUDGE COHN: We are not off the record, no.

MR. POLLACK: May we be?

JUDGE COHN: Oh, yes.

Off th e record.

(Discussion off the record.)

JUDGE COHN: Back on the record.

Mr. Coffey.

Q (By Mr. Coffey) Do you mean to tell me that you gave dues checkoff cards to all the employees in the home?

A Yes, I did.

Q Even those on the nightshift?

A Well, whoever came to pick up his check, at that time was given the cards to sign.

Q There are people in the home who--to whom you do not give checks, are there not?

A Well, then the nurse in charge would probably give these c a r d s.

MR. COFFEY: Could we go off the record, your Honor.

JUDGE COHN: Yes. Off the record.

(Discussion off the record.)

JUDGE COHN: Back on the record.

MR. COFFEY: General Counsel would like to offer all the dues checkoff cards in Respondent's 6 for identification, into evidence.

M R. POLLACK: It is hard for me to understand the need for them since obviously the recognition agreement was not based upon those particular cards and it

Do you recall you said you gave them out to--to all the employees of which you think there were about 40 at that time?

THE WITNESS: Right.

JUDGE COHN: You did not see the people on the night shift?

THE WITNESS: No.

JUDGE COHN: So how did you arrange that?

THE WITNESS: Well, the nurses, we gave the nurses--

JUDGE COHN: Did you give the nurses any instruction?

THE WITNESS: And we gave them the cards and we probably told them, "You have to sign"--

JUDGE COHN: No. I don't want to know what you probably did.

What did you tell them?

THE WITNESS: We told them to have the nurses sign this and th en they can give the check.

MR. KAUFMAN: I object because I don't think the witness is testifying about the things he told them, rather than what he thinks somebody told them or what he is talking about his actual knowledge.

JUDGE COHN: You can clarify that on redirect.

MR. KAUFMAN: Your Honor is asking these questions and I assume your Honor wants to have a clear record.

JUDGE COHN: No, but I asked him whether he gave instructions and he said that he did. First he said he probably and I said I want to know what they are.

He said he did.

All right. What-- Was it you that gave the instructions to the nurses?

THE WITNESS: No.

JUDGE COHN: You were in charge of this business with those cards that we are talking about; is that right?

THE WITNESS: Yes.

JUDGE COHN: You were the bookkeeper?

THE WITNESS: Yes.

JUDGE COHN: All right.

Now what did you do about seeing to it that the people pm the nightshift whom you were unable personally to visit or talk to, what did you do about these slips?

THE WITNESS: All right.

Your Honor,when you say I was in charge, is -- I was in charge of handling the cards which came within--within my handling. All right?

JUDGE COHN: Right.

THE WITNESS: That is those that I gave checks,

I am suppose to take care and see that these cards are signed and it is not my job to see if there are 45 employees or so, then I should have 45 signed cards.

JUDGE COHN: Well, you said that--it was my understanding and that is when I stopped Mr. Coffey, that you had said that you gave them out to about 40 people.

THE WITNESS: Well, the paychecks at that time, I was asked about how many employees were there. I believe there were about 40 employees. And we made about 40 checks for them.

JUDGE COHN: Right.

So whoever signed the checks was supposed to sign such a card, which actually--

JUDGE COHN: Let me start again.

How many people come to your office to get the checks, to get their payroll checks?

THE WITNESS: Well, at that time it was whoever was during the day, whoever was available or even sometimes if somebody works at night who would come during his time off to pick up the check--

JUDGE COHN: I will ask you another question.

Do all employees who work during the day while you are in the office, is it the practice they come

to your office to get the check?

THE WITNESS: Today, no.

JUDGE COHN: Not day.

THE WITNESS: Not day.

JUDGE COHN: Talking about this--this happened in January?

THE WITNESS: Right.

JUDGE COHN: We are talking only about January.

THE WITNESS: In January; right. So at that time it was also--we used to givw so metimes checks to the Director of Nurxes, that she should give out. She didn't have tome, or what, I would give it out, et cetera.

It was not a set pattern that I was the only one who give out checks.

JUDGE COHN: Did the people come to your office or did you walk around?

THE WITNESS: No.

JUDGE COHN: To where they were?

THE WITNESS: They would come to my office and I wouldn't have it. I would call--I would tell them where the checks -- the check is.

JUDGE COHN: You would say, "I don't have it, the Director of Nurses has it"?

THE WITNESS: And she wouldn't have, she might get back to me, et cetera.

JUDGE COHN: As far as the checks for the night shift, you would see to it that--I am just talking about their payroll checks.

THE WITNESS: Right.

JUDGE COHN: You would see to it that they get sent up so that when those people come to work at midnight,or whenever,that they get their check; right?

THE WITNESS: Right.

JUDGE COHN: Now, what we are zeroing in now is the time that these pink slips were handed out together with the paydeck; right.

THE WITNESS: Yes.

JUDGE COHN: How did you handle those pink slips with reference to employees on the night shift?

M R. KAUFMAN: Objection. I object to your question, your Honor.

I think the proper question is did he--if he handled it at all. You are presuming a fact in your questinn, sir.

JUDGE COHN:: Well, I am presuming it becausethat is based on what he has already indicated.

MR. KAUFMAN: No.

MR. POLLACK: The witness specifically said that he did not give any instructions in that regard.

JUDGE COHN: Not so sure about that.

MR. POLLACK: I heard him say no to your question.

JUDGE COHN: I overrule your objections.

Q (By the Hearing Officer) You handled all the checks, right? I mean your office, you made all the checks for everybody?

A I make out all the checks.

Q Okay. Now you also had to see to it that they were distributed; is that right?

A The checks?

Q Yes.

A Yes.

Q Either people came to you during the day or you said you gave it sometimes some of th em to the Superintendent of Nurses?

A Right.

Q And other times you saw to it that the checks I am talking about were transmitted or--for the night shift?

A Right.

Q Incidentally, how was that done? Physically.

A I would bring it into the--into the nurses' office or she would come and pick it up.

Q Which nurse?

A Miss Harrington.

Q Okay.

And you would say "These are for the night shift"?

A Right.

Q Is that it?

A Right.

Q Okay.

Now what did you do about those payroll checks on th3 day that these -- that you were also seeing to it that the people signed the pink slips, what were you doing about the paychecks that day and the pink slips, if anything with regard to the night shift?

A That was not my responsibility.

Q So on that particular day, as far as the night shift is concerned, you did not even handle the pink slips; is that it?

A Probably not.

Q Don't tell me probably. I want to know.

A No.

MR. COFFEY: No further questions.

MR. CANTORE: Nothing further.

JUDGE COHN: Redirect.

MR. POLLACK: Nothing.

MR. KAUFMAN: Nothing, your Honor.

JUDGE COHN: Thank you, Mr. Zehnwirth.

MR. KAUFMAN: Oh, I have one question.

JUDGE COHN: Wait a minute.

MR. KAUFMAN: Just one question.

Q (By Mr. Kaufman) Mr. Zehnwirth, when people came to the office for their check, did any of them say they did not want to sign the card?

A Yes.

Q Did you give them their check?

A Eventually, yes.

Q And they did not sign the card?

A Yes.

MR. KAUFMAN: No further questions.

JUDGE COHN: Anything further?

MR. COFFEY: No further questions.

JUDGE COHN: I have a question.

EXAMINATION

Q (By Judge Cohn) What do you mean by "eventually," sir?

A Well, I have checked with the administration and I

informed Mr. Ostreicher I have here somebody who doesn't want to sign the cards, so he told me if the man doesn't want to sign, just don't make--don't bicker about it. Just give him the checks anyways.

Q That would be the same day, you are talking about the same day?

A Right.

Q All right.

I mean as soon as they said they did not want to sign the card then you would call Ostreicher; at once?

A He told me if they don't want to, just give it to them ; that's it.

JUDGE COHN: All right.

I have nothing else. Thank you Mr. Zehnwirth.

(Whereupon, the witness, Abraham Zehnwirth was excused.)

JUDGE COHN: Let us take a five minute break.

(Whereupon, at 3:47 p.m., the hearing recessed, to reconvene at 4:00 o'clock p.m., the same day.)

JUDGE COHN: On the record.

Whereupon,

was called as a witness and, having duly affirmed to tell the truth,the whole truth, and nothing but the truth, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Kaufman) Would yuu state your name and address for the record?

A Mayer Laufer, 1364 53rd Street, Brooklyn, New York.

JUDGE COHN:: That is l-a-u-f-e-r, Laufer; is that it?

THE WITNESS: Right.

JUDGE COHN: What is the first name, sir?

THE WITNESS: Mayer, M-a-y-e-r/

JUDGE COHN: M-a-y-e-r?

THE WITNESS: Yes.

Q (By Mr. Kaufman) Now, Mr. Laufer, by whom are you employed, sir?

A River Manor Health Related Facility.

Q In what capacity are you employed?

A I am Assistant Administrator.

Q And have you held that position since the nursing home was opened in September?

A Yes, I did.

Q As Assistant Administrator, sir, do you have any

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Twenty-Ninth Region

In the Matter of

SAMUEL LIEFER AND HARRY OSTREICHER,
A COPARTNERSHIP, d/b/a RIVER MANOR
HEALTH RELATED FACILITY

-and-

LOCAL 144, HOTEL, HOSPITAL, NURSING
HOME AND ALLIED HEALTH SERVICES UNION,
affiliated with SERVICE EMPLOYEES
INTERNATIONAL UNION, AFL-CIO

Case Nos.
29-CA-4187
29-CA-4187-2

-and-

LOCAL 531, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERCA

Party in Interest

SAMUEL LIEFER AND HARRY OSTREICHER,
A COPARTNERSHIP, c/b/a RIVER MANOR
HEALTH RELATED FACILITY

-and-

LOCAL 1115, JOINT BOARD, NURSING HOME
AND HOSPITAL EMPLOYEES DIVISION

Case No.
29-CA-4245

-and-

LOCAL 531, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERCA

Party in Interest

LOCAL 531, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

-and-

LOCAL 1115 JOINT BOARD, NURSING HOME AND HOSPITAL EMPLOYEES DIVISION — Case No. 29-CB-2060

-and-

SAMUEL LIEFER AND HARRY OSTREICHER, A COPARTNERSHIP, d/b/a RIVER MANOR HEALTH RELATED FACILITY,

Party in Interest

SAMUEL LIEFER AND HARRY OSTREICHER, A COPARTNERSHIP, c/b/a RIVER MANOR HEALTH RELATED FACILITY

-and-

LOCAL 1115, JOINT BOARD, NURSING HOME AND HOSPITAL EMPLOYEES DIVISION — Case No. 29-CA-4307

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16 Court Street,
Brooklyn, New York
July 16, 1975

The above-entitled matter came on for hearing at 9:40 o'clock a. m.

BEFORE:

JULIUS COHN,

Administrative Law Judge.

APPEARANCES:

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Counsel for the General Counsel,
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VLADECK, VLADECK, ELIAS & LEWIS, ESQS.,
BY: ROBERT CANTORE, ESQ., of counsel,

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BY: ARTHUR KAUFMAN, ESQ., of counsel.
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GUTTERMAN & POLLACK, ESQS.,
BY: SANDFORD POLLACK, ESQ., of counsel.

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I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS	VOIR DIRE	RE-REDIRECT
M. J. Ostreicher	1355 1414 1507	1380 1507			1421 1429	
Mary Lee Terrell	1434	1449				
Albert Hazell	1457	1471	1474	1477		1478
Fraulein Brown	1480	1485				
Brenda Frazer	1487	1489				
Allrich Normil	1493					

oOo

E X H I B I T S

GENERAL COUNSEL NO.	FOR IDEN.	IN EVID.
25A through T		1424
27	1425	1432
RESPONDENT'S NO.		
15	1454	1456

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PROCEEDINGS

JUDGE COHN: Let's go on the record.

The hearing will be in order.

Mr. Kaufman, do you have another witness?

MR. KAUFMAN: Yes.

Can I just take out what's ours from this and give it back to him?

JUDGE COHN: All right.

MR. KAUFMAN: Oh, before we go forward--

JUDGE COHN: We are on the record.

MR. KAUFMAN: Can we go off the record for a second?

JUDGE COHN: Off the record.

(Discussion off the record.)

JUDGE COHN: Back on the record.

Mr. Kaufman.

MR. KAUFMAN: I will call Mr. Ostreicher.

JUDGE COHN: Raise your right hand.

Whereupon,

MARVIN JOSEPH OSTREICHER

called as a witness by and on behalf of the Respondent herein, and having been affirmed to tell the truth, was examined and testified on his affirmation as follows:

DIRECT EXAMINATION

BY MR. KAUFMAN:

Q Mr. Ostreicher, by whom are you employed?

A River Manor.

Q Would you give us your full name?

A Marvin Joseph Ostreicher.

Q You are employed by River Manor?

A Right.

Q In what capacity.

A As Administrator.

Q How long have you held that title?

A Since the inception of the Home in mid-August.

Q Are you familiar with an employee by the name of Normil, Allrich Normil.

A Yes, I am.

Q And in what capacity was Mr. Normil employed?

A As a cook.

Q In your capacity as Administrator what is your responsibility?

A In terms of what?

Q In terms of operations.

A In terms -- well, I am the one that is ultimately responsible for the entire operation of the facility.

I understand that this is going to be a direct witness.

JUDGE COHN: I said it's his witness.

MR. KAUFMAN: But I was wondering if it might be more expeditious at this point for me to rest my case since I have no further witnesses.

MR. COFFEY: We are calling him under 43B.

JUDGE COHN: All right.

That's not what he is saying.

MR. KAUFMAN: No, because I am prepared to rest at this point.

JUDGE COHN: Okay. I am sorry, I should have asked you.

MR. KAUFMAN: We have no other witnesses.

JUDGE COHN: It's my understanding as of this point Respondent has rested.

Whereupon,

MARVIN JOSEPH OSTREICHER

resumed the witness stand, having been previously affirmed, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. COFFEY:

Q Mr. Ostreicher, I direct your attention to General Counsel's Exhibit 25A to T.

Can you tell me if Mr. -- Mrs. Estelle Payne

is an LPN that worked for River Manor during that period?

A These are Estelle Payne's time cards, yes.

Q Then she worked every week during that period?

A I'd have to see the cards in order to tell you that.

Well, the time cards reflect that she worked from 9/29/74 through 11/30/74, then from 12/14/74 -- from the week ending 12/14/74 to 2/15.

Q We don't have the 12/7 --

A Right. There's no time card for Estelle Payne for the week ending 12/7.

Q And it wasn't supplied to us.

MR. KAUFMAN: Objection.

That's argumentative with the witness.

We have been all through that, Your Honor.

JUDGE COHN: Yes.

Look, you just showed him the time cards and he's telling you what they reflect.

MR. COFFEY: Right.

Q Now, do they also reflect that she worked in each week the four to twelve shift?

A I'd have to look again. I didn't look for that.

MR. POLLACK: May we be off the record,

Your Honor?

JUDGE COHN: Off the record.

(Discussion off the record.)

JUDGE COHN: Back on the record.

BY MR. COFFEY:

Q Estelle Payne was an LPN, is that correct?

A That's correct.

Q And what shift did she work on?

A From looking through the cards I see that every day she worked the four to twelve, except for two days where she worked twelve to eight--

Q And--

A (cont'g)--in that period.

Q Isn't it true that her--among other days she worked in each week she worked Sunday and Monday?

A I don't recall. I don't know.

I mean, I didn't--I just looked through to see if she worked the four to twelve shift. I didn't check the days she worked.

MR. COFFEY: Off the record for a second.

JUDGE COHN: Off the record.

(Discussion off the record.)

JUDGE COHN: Back on the record.

BY MR. COFFEY:

Q Now, as to Mrs. Payne, were her duties

similar to that of any other LPN working at River Manor?

A Her duties, once she was there--in other words in the facility itself?

Q Yes, the duties in the facility itself, were they the same as any other LPN?

JUDGE COHN: Let me ask you the Passover question.

Tell me, how was she different from Mercado--

THE WITNESS: She was a per diem.

JUDGE COHN: (cont'g)--or anybody else?

THE WITNESS: She did not work a full week in the facility.

I don't know offhand if she was scheduled on or if she was called in always.

I believe she was scheduled on sometimes and sometimes she was called into the facility.

She was a per diem. She was called in. She was a per diem employee.

JUDGE COHN: Well, if she works--if she's got cards, you know, a stack of cards, A through T, that's more than twenty, which indicates over twenty weeks. And apparently she worked pretty consistently four to twelve, according to your own observation of the cards, except for two days, you said. How--how does that make her a per diem employee and LPN and Russell

or Mercado were not per diem.

THE WITNESS: Well, per diem--when they refer to per diem, that means an employee that does not work a full week, in one week might work one day, another week she might work two days.

She is employed to fill in gaps in the schedule. That's why she called per diem. She works different days.

She's hired four days of the week rather than as a full-time employee.

JUDGE COHN: But as a per diem--as a per diem employee, you say that her--she was constantly a four to twelve worker?

THE WITNESS: That's what I see there.

JUDGE COHN: So her per diem would be limited to a four to twelve shift pretty much?

THE WITNESS: In this case.

I don't know whether a per diem necessarily is limited to one shift.

JUDGE COHN: All right.

THE WITNESS: Generally they are because--

JUDGE COHN: Anything else?

MR. COFFEY: Yes.

BY MR. COFFEY:

Q Were her duties similar to that of Mrs. Russell?

JUDGE COHN: All right. Ask one more question.

BY MR. COFFEY:

Q -- on that.

Now, were her duties the same as Mrs. Link, who was also an employee who didn't work a full week and was an LPN?

A They were probably the same.

MR. COFFEY: All right. Mark this as General Counsel's 25.

MR. POLLACK: I don't know where we are with the cards, and what we are--

MR. KAUFMAN: We are left in limbo right now.

MR. POLLACK: We had a very limited examination.

MR. KAUFMAN: That was limited to just those cards.

JUDGE COHN: Yes.

MR. COFFEY: I am going to call him on rebuttal.

MR. POLLACK: Can we finish with this?

MR. KAUFMAN: This isn't supposed to be rebuttal.

He was given special permission for the

purpose of those cards only.

JUDGE COHN: He can call him as a witness.

MR. KAUFMAN: Surely. Later on.

MR. POLLACK: I want to know where we are up to.

JUDGE COHN: He can stay on this shift and he can shift his gears.

Let's terminate this problem with the cards.

MR. COFFEY: Right.

JUDGE COHN: Are you offering them now?

MR. COFFEY: Yes. We offer this as General Counsel's 25 into evidence.

MR. KAUFMAN: I would like a voir dire.

JUDGE COHN: You want a voir dire?

MR. KAUFMAN: Yes.

JUDGE COHN: Okay, go ahead.

VOIR DIRE EXAMINATION

BY MR. KAUFMAN:

Q When you say that Miss Payne was per diem, does that mean she could be scheduled four days and also called in four days?

A Yes.

Q Now, by looking at these cards, can you tell us which days she was scheduled for and which days she was called in for?

A No, I cannot.

Q The cards would not reflect that?

A No, the cards would not.

Q And that's what per diem means?

A Generally, yes.

Q And Miss Harrington keeps a list of per diem people to call in?

A She does.

Q And some of them could also be scheduled?

A That's right.

A per diem is just--a per diem very often has another job or doesn't want to work more than a couple of days a week.

MR. KAUFMAN: I would object to these cards since we do not know by looking at these cards whether or not the days reflected on it were days that she was scheduled maybe to fill in for a worker that was off or days that she was called in to work to fill in for someone who didn't report on that day.

MR. CANTORE: I would also similarly move in response to the question, how many days was Miss Frazer late, that that answer of thirty-one days be stricken on the same ground.

MR. POLLACK: Except that Miss Frazer, as you know, Your Honor--

Mr. Kaufman has testified--

JUDGE COHN: Wait.

MR. POLLACK: (cont'g) -- was a full time employee.

MR. KAUFMAN: And has testified--

JUDGE COHN: Hold it.

You are not--you are not to discuss this stuff back and forth.

Do you hear this--you are to address your remarks to me, and one person speaks at a time.

All right. Now, your motion, if it was a motion, with regard to Frazer, is denied.

Okay.

MR. POLLACK: I would--

JUDGE COHN: Now--

MR. POLLACK: I would join in the objection of Mr. Kaufman to the discussion of these cards on the same basis.

JUDGE COHN: I am going to receive the cards in evidence, and, of course, you can make all your arguments in the brief based upon the testimony that we have adduced concerning Payne's cards.

Okay.

MR. KAUFMAN: Is this--so we are perfectly clear, since we had a problem this morning, is this with

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Whereupon,

MARY LEE TERRELL

was called as a witness, by and on behalf of the General Counsel, and having been previously duly sworn in, was examined and testified further on her oath as follows:

DIRECT EXAMINATION

BY MR. COFFEY:

Q Now, Mrs. Terrell, you heard Mrs. Russell testify that on some occasion, whether it was in January or December, that she found you in the staff room and that when she asked you to do something you told her that, in effect, that she couldn't give you any orders.

Do you recall any such exchange between you and Mrs. Russell?

A No.

Q Did you ever refuse tA. do anything that Mrs. Russell asked you to do?

A No, because she never gave me any orders.

Q Did she ever tell you that she was going to tell Mrs. Harrington that you hadn't done anything?

A No, Mrs. Russell has never ever said anything to me when I was at River Manor between December and January.

Q Now, when Mrs. Harrington--did Mrs. Harrington ever talk to you about any trouble between yourself

and Mrs. Russell?

A No, she did not.

Miss Harrington has never said anything to me either, not even a good morning.

Q Has she ever remarked about your--the way you were dressed?

A No, she has not.

Q Has she ever--has anyone ever remarked--

A No.

Q (cont'g)--about the way you dress?

A No.

Q Anyone--no one in management?

A Not no one.

Q Did Mrs. Russell ever say anything to you about that?

A No.

Q Did any LPN tell you anything about your dress?

A No, never.

Q Were you ever criticized for the way you handled patients by any LPN or any -- Mrs. Harrington or Mrs. Russell?

A No, I never worked with Ms. Russell.

I worked with Ms. Mercado and she said I was a good worker, and that was all. She said, you know --

Q Did Mrs. Harrington or Mrs. Russell or anyone else in management or any LPN ever criticize your attitude as being snippy?

A No, never.

Q Or criticize your attitude in any way?

A No, never.

Q Did you ever work on the seven to three shift?

A I never worked seven to three between January and--December and January.

Q Did you ever work---

A No.

Q (cont'd)--at any time--

A No, I am working seven to three now, yes.

Q Since you returned, you mean?

A Since I returned I work seven to three, but before that, never.

Q When was the first time you worked seven to three?

A In April--I think it was around the 20th--I don't remember the exact date that we started--the new director started--changed the shift for this entire home.

Q Do you know of any other employees that have had differences with Mrs. Russell concerning their duties?

Q (cont'g)--did Mrs. Harrington tell you you were being discharged for your attitude?

A No, she did not.

Q Did she say you were being discharged for your unchecked appearance?

MR. POLLACK: Your Honor, this is direct examination of this witness.

I wonder if we can have the questions slightly less leading.

JUDGE COHN: All right.

MR. KAUFMAN: No--not--

JUDGE COHN: Ask her if you wish--

MR. KAUFMAN: Not only that, Your Honor, but we already have this witness' testimony of this portion, because Ms. Terrell was an initial witness.

Now, this is supposed to be rebuttal on areas--

MR. COFFEY: That's right.

MR. KAUFMAN: (cont'g)--that were not covered.

JUDGE COHN: All right, let's not argue.

Overruled.

Harrington testified as to this, so he can go back to it.

Go ahead.

What's the question--repeat the question. Or do you want to ask another? Do you want to ask her

what the conversation is? Is that what you want to ask her?

MR. COFFEY: I want to ask her also if Mrs. Harrington mentioned anything--

Q Can you tell us the entire conversation that took place between you and Mrs. Harrington when she discharged you.

A Yes.

Q What did she say to you and what did you so to her?

A She called me on the phone.

She said, "Ms. Terrell?"

I said, "Yes."

She said that, "I am not satisfied with your work."

And I said, "Oh."

And she said, "Don't come in any more.

I said, "Thank you," and I hung up the phone, and she hung up the phone.

Q Did she say--did she specify in any way why she was dissatisfied with your work?

MR. KAUFMAN: Objection.

MR. POLLACK: Objection.

MR. KAUFMAN: She just gave--

JUDGE COHN: She gave the whole conversation.

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Q (cont'g) Did you ever get this document, Mrs. Terrell?

A Can I look at it?

Q Yes.

JUDGE COHN: Show it to her first. She wants to look at it first.

A Yes.

Q Now, when did you get this document?

A Ms. Harrington gave it to me in December when she gave me a 531 card to sign.

Q Now, in a section of the document it says work responsibilities.

There is a section that says "any condition which appears to be unusual, either with any patient or in the facility, must report--be reported immediately."

Now, when this--when this--an incident covered by that statement arose, whom did you report it to?

MR. KAUFMAN: Can we find out if it ever arose, if there is a foundation for this?

JUDGE COHN: Yes.

Q Did there ever come a time that you had to report any unusual condition with a patient or anything else in the facility?

MR. KAUFMAN: That question covers a patient or anything else?

MR. COFFEY: That's what it says.

JUDGE COHN: Overruled.

All right, can you answer that question, Mrs. Terrell? If you can't, you can't.

A Only like if a patient has a seizure or something like that, you know.

Q Then who would you report it to?

A To the nurse in charge.

Q And did you--and did that happen?

A Sure.

Q And who was the nurse in charge that you reported it to?

A Miss Mercado.

Q Mrs. Mercado?

A Yes.

Q And when did that happen?

A When I was working with her--I can't say exact months.

It was in between December and January when she was working with me.

Q Now, there is a section that says, "all accidents to a patient, visitor, employee, must be reported immediately to your supervisor."

Were there any accidents while you were on your tour?

A No.

MR. KAUFMAN: Accidents involving this employee or accidents involving patients?

Again, the question is vague.

JUDGE COHN: Well, he's asking a question based on the Respondent's own instructions, what she's reading from, so I am going to allow it.

Q Were there any accidents that you reported?

A No, no.

Q Now, there is a section that says, "Patient and visitor requests should be noted and reported to the supervisor."

A That would be the nurse in charge.

MR. KAUFMAN: Objection.

MR. POLLACK: Objection.

I move to strike.

MR. KAUFMAN" There's been no testimony that she ever did this.

Q Did you ever get from a patient--

MR. POLLACK: May we have a ruling?

MR. COFFEY: I didn't--

JUDGE COHN: Mr. Coffey, will you hold it? These people made an objection.

Give me an opportunity to make a ruling.

MR. COFFEY: All right, Your Honor.

JUDGE COHN: I am going to sustain the objection as to the form of the question.

Go ahead.

Q Did you ever get any requests from patients or visitors while you were on duty?

A Requests?

Q Yes.

A I don't really understand, Mr. Coffey. Like what? I mean, you know--

Q Any type of request from a patient or a visitor, of a visitor to see a patient or a patient to have something done for them?

A Yes, we get requests like if the visitor wants to take the patient out.

Q And who would you report that to, if you got such a request?

A The nurse in charge, Nurse Mercado.

Q And did that happen?

A Yes.

Q How many times did it happen?

A All the time.

Q You mean--

A This was a--

Q Common thing?

A Yes. The visitor would want to take the patient out. They had to write--sign a release form.

Q Okay.

A Miss Mercado did that.

MR. COFFEY: Your Honor, can we have the originals of General Counsel's 10, 11 and 12?

They have been taken again.

We still have only the copies.

MR. KAUFMAN: I've already sent them back to the Home, Mr. Coffey.

JUDGE COHN: It was understood they could substitute Xerox copies for the originals. Now, as I recall--

MR. COFFEY: We never--

JUDGE COHN: Mr. Coffey, why do you want the originals at this point?

MR. COFFEY: First, we would like them in the record because the ink on the originals differs in certain parts and it looks as if they were written in certain parts--written at two different times. It's very, very hard from copies--

MR. KAUFMAN: How is this witness going to testify that that's Mrs. Harrington's handwriting?

MR. COFFEY: I am just asking for the originals.

Q Did she call you back?

A She called me--

Q On the phone?

A (cont'g)--on the phone and told me when to come in to work, which was on the 4th.

Q Now, did Mrs. Harrington tell you there would be a trial period?

A She did not tell me there would be a trial period.

Q Did she say anything--

A When she hired me she did not say it.

Q Did she say there would be a period of time before you became a permanent part of the staff?

A She did not.

MR. COFFEY: No further questions.

JUDGE COHN: Before you go ahead I have one question.

EXAMINATION

BY JUDGE COHN:

Q You are presently employed by River Manor?

A Yes, I am back to work now, yes.

Q Since when?

A Since April 16th.

Q April 16th?

A April 16th.

JUDGE COHN: All right.

Off the record.

(Discussion off the record.)

JUDGE COHN: Back on the record.

During the off the record colloquy it has been determined that not only has Mrs. Terrell been reemployed by the Respondents, but also Mr. Hazell--

MR. COFFEY: Yes. And Miss Frazer.

JUDGE COHN: And Miss Frazer, but not Mr. Normil.

MR. COFFEY: Not Mr. Normil.

JUDGE COHN: Okay, thank you.

Let me rephrase it so that the record is clear and shows that Miss Terrell, Miss Frazer and Mr. Hazell have been reemployed by the Respondent.

Mr. Normil has not been reemployed by the Respondent.

Okay. Now, you have some cross-examination?

MR. KAUFMAN: Correct.

CROSS-EXAMINATION

BY MR. KAUFMAN:

Q Miss Terrell, you testified about when people want--when patients want to leave to go out for a day.

What do they have to fill out?

A It's a form, a small white form.

Q Right.

A They don't fill it out. The nurse in charge--we don't fill it out either.

We give it to--you know, have the visitor wait for the nurse if she is not on the floor, and she in turn fills this out for the patient to go out and visit since it's--

Q That's for the patient then?

A Yes.

Q All right.

Now, you testified during your direct examination, the first time you were on the stand, that sometime in December, Miss Harrington walked over to you and asked you to sign a card; is that right?

A I said Miss Harrington called me and said to me, "Miss Terrell, I have a card for you to sign."

She said, "I don't have the card with me. I will bring it back to you."

Q And then she came back?

A She came back later.

Q And she had the card?

A She had the card.

Q And you went into the staff room to read it?

A She had the card with the rules and regulations.

Q You didn't tell us the last time about the rules and regulations; is that right?

A I think I did. I don't remember.

Q Oh, you did tell us about that last time?

MR. CANTORE: Objection.

She said that she thinks she did.

JUDGE COHN: Take it easy. Don't raise your voice. We can hear you.

Overruled.

Q Did you tell us the last time you were on the stand that she also brought you General Counsel's 27 in evidence, which is the personnel policies?

A I think I did, with the card. I am not sure.

Q So, now it's your testimony, as I understand, when you testified on direct the first time you were here, that when Miss Harrington spoke to you--when she came over to see you after she spoke to you, she brought you a card along with the personnel policies; is that right?

A I think I did.

Q And what did you do--what did she say to you with the card and the personnel policies?

A She passed--she said to me--she said, "Miss Terrell" -- when she came back she said, "Miss Terrell," she said, "sign this card."

And I said to her, "Do I have to?"

Q Yes?

A No. Sign this card and give it back to me tomorrow.

And I said to her, "Do I have to?"

And she said, "Yes."

Q And then what did you do?

A And I said, "Since I am here and you are here today, why should I give it to you tomorrow? I will give it back to you today."

So I took the card with the rules and regulations and went into the entry room off from the staff room on the first floor.

Q Right.

A Right, and I read the card, and then I called Miss Robinson, who was a nurse's aid.

Q Did you read the rules and regulations?

A I certainly did.

Q You read the rules and regulations?

A After I finished with the card.

I did not read the rules and regulations at that point, no.

Q You signed the card and then you read the rules and regulations?

A Afterward, yes.

Q How much afterwards?

A Well, after I took the card back to Miss Harrington.

Q And then you read the rules and regulations?

A Then I came back to my job that I was doing in the empty room there, because I was folding patients' clothing, and that's where I read the rules and regulations.

Q So, as I understand it now, that day after Miss Harrington spoke to you, when she came out to see you, she brought you the rules and regulations, and there was a card--

A Yes.

Q (cont'g)--is that right?

A Yes.

Q And that's all you received, is the rules and regulations and that card?

A From Miss Harrington.

Q On that day you signed a card; is that right?

A I signed a 531 card, membership application card, that's what it was.

Q And that's all you signed on that day?

A On that day?

Q Is that right?

A That's right.

Q On the following day--

JUDGE COHN: Mr. Coffey, will you please sit down?

MR. COFFEY: Yes, Your Honor.

Q On the following day did anything happen?

A Prior to that day with Miss Harrington?

Q No, no, the day after.

A The day after?

Q Yes, with Miss Harrington.

Did you have any other conversation with Miss Harrington--

A No.

Q (cont'g)--or did you see Miss Harrington?

A No.

Q Did you sign anything else on that day?

A I don't remember.

MR. KAUFMAN: Would you mark this, please?

(Above-referred to document was marked as REspondent's Exhibit No. 15 for identification, as of this date.)

Q Isn't it a fact, Miss Terrell, that when you received the personnel policies, you have to sign a slip that you received it?

A Yes. I now remember. Yes, I did sign it.

Q You now remember that you signed the slip?

A With the card, that's right.

Q So now you signed the slip and the card?

A I signed the slip.

Q I show you the slip and I ask you if that's the slip that you signed (handing documents to witness)?

A She told me to sign it, too.

Yes, I remember now.

Q Now, she told you to sign two things.

She said, "Sign the slip and sign the card"?

A I forgot about the slip for the rules and regulations.

Q And is this--

A So, you know, she said, this way, she said, "Do you know you got the rules and regulations?"

Q Is that your signature?

A That's it.

Q Is that the date that you signed it?

A 12/17.

Q And that's the date that she gave you the rules and regulations?

A That's the day.

MR. KAUFMAN: I offer it.

MR. POLLACK: No objection.

JUDGE COHN: Any objection to Respondent's

of course.

15 is received in evidence.

MR. COFFEY: General Counsel calls Albert Hazell to the stand.

JUDGE COHN: Off the record.

(Discussion off the record.)

JUDGE COHN: Back on the record.

Mr. Hazell, you are still under oath.

Whereupon,

ALBERT HAZELL

was called as a witness by and on behalf of the General Counsel, and having been previously duly sworn in, was examined and testified further on his oath as follows:

DIRECT EXAMINATION

BY MR. COFFEY:

Q Mr. Hazell, I direct your attention to Party in Interest 9, which is the Local 144 card signed by Alma Robinson and I--that's dated 1/9/75.

When in fact did you give this card to Mrs. Robinson?

A I gave the card to Miss Robinson the--

MR. POLLACK: May I have that answer? I am sorry, Your Honor.

JUDGE COHN: He didn't give an answer yet.

A I gave the card to Miss Robinson between

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the 9th and the 10th.

Q Can you tell me on--to the best of your recollection, not what day it was according to the time clock, but according to an actual date, I am--

A I think I gave it to her--

MR. KAUFMAN: Objection.

JUDGE COHN: Wait a minute.

He doesn't have the time book in front of him.

MR. COFFEY: Right.

MR. KAUFMAN: He's just testified as to when he gave the card. Now he's asking the question again.

JUDGE COHN: He said, "I gave it to her between the 9th and the 10th."

Isn't that what he said?

MR. KAUFMAN: Yes.

Q By that what do you mean, by between the 9th and the 10th?

A I think I gave Miss Robinson on the night of the 9th.

JUDGE COHN: The night of the 9th?

THE WITNESS: The night of the 9th.

Q But by the night of the 9th, do you mean--

MR. KAUFMAN: Objection.

MR. POLLACK: That's an obvious answer.

MR. KAUFMAN: He just testified and it's becoming leading at this point. That's his witness.

JUDGE COHN: You don't ask him do you mean.

MR. COFFEY: All right.

JUDGE COHN: Sustained.

BY MR. COFFEY:

Q What time in the morning did you give it to her?

MR. KAUFMAN: Objection.

MR. POLLACK: Objection.

He said--

MR. KAUFMAN: He's testified he gave it the night of the 9th.

Q Was it before or after midnight?

MR. KAUFMAN: Objection.

JUDGE COHN: Wait a minute.

A When I said the night--

JUDGE COHN: I will overrule the last objection.

A When I siad the night, I mean from the time I arrive on duty to the time I leave the next morning, that's the night, so I call it the night.

JUDGE COHN: When did you arrive on duty?

THE WITNESS: I arrived on duty, if I can

remember correctly, it was 11:38, according to the book.

JUDGE COHN: Eleven what?

THE WITNESS: 11:38.

JUDGE COHN: 11:38 on January 9?

THE WITNESS: 9th.

JUDGE COHN: And you left--

THE WITNESS: I punched out at eight o'clock or after eight.

JUDGE COHN: Eight o'clock the following morning?

THE WITNESS: It's between that period I gave her the card.

BY MR. COFFEY:

Q Was it before or after midnight that you gave it to her?

A I can't remember exactly. I know it's within that period.

Q So that night you worked from 11:38 on the 9th all the way over to sometime in the morning of the 10th?

A That's right.

Q It was during that period?

A That's right.

Q Now, during that shift did you tell Mrs. Alma Robinson that Mrs. Frazer had been fired?

BY MR. COFFEY:

Q During your conversation with Mrs. Robinson on the 9th, at any time during that shirt, from 11:38 on the 9th through eight o'clock on the 10th--

A Yes.

Q (cont'g)--did you say anything to Mrs. Robinson concerning Mrs. Frazer?

MR. KAUFMAN: Objection.

JUDGE COHN: Overruled.

A No, I did not. The only thing I could have said--

MR. POLLACK: Objection as to what he could have said.

A Okay. I did not.

Q All right.

Now, on--did you have a conversation with Mrs. Robinson on the night following the night you gave her the card?

A That's the night of the 10th you are speaking of?

Q The night that you came in at some time late in the evening of the 10th and left in the morning on the 11th.

A If I had a conversation with her?

Q Yes, during that period of time, the day

after you--you gave her the card.

A No, I hadn't any conversation.

Q Did you ever tell Mrs. Robinson--

MR. KAUFMAN: Go ahead, finish your question.

Q (cont'g)--that Mrs. Frazer had been discharged?

MR. KAUFMAN: Objection.

It's a leading question.

JUDGE COHN: All right, I will allow it.

Overruled.

A I remember on the night of the 11th I saw Mrs. Robinson.

She was on duty and I told her what Frazer had told me, that she was called by phone by Miss Harrington during the 10th, which was a Friday, and she was told by Miss Harrington that she--well, I do not remember the exact words, but words to the effect that she is fired.

That's what I told Mrs. Robinson.

Q How many days--how many shifts had you worked after Mrs. Robinson signed the card for you before you told her Mrs. Frazer had been discharged?

A Well, I gave Mrs. Robinson the card on the night of the 9th. I worked that night. I worked the night of the 10th, and I worked the night of the 11th,

and the night of the 11th I told her what Mrs. Frazer told me.

Q Are you sure it couldn't have been on the night of the 10th?

MR. KAUFMAN: Objection.

This is Mr. Coffey's witness. That's a leading question.

The witness has answered.

JUDGE COHN: He just said something about the night of the 11th.

Now you want to impeach him?

BY MR. COFFEY:

Q To the best of your recollection, it was on the night of the 11th then?

A Yes, the night of the 11th, as far as I could remember.

Q Mr. Hazell, at any time during your tenure were you ever criticized for speaking to employees at a time when you should have been working?

A Do you mean criticized by whom?

Q By anyone in management?

A Not really.

As far as management is concerned, I do not get--in fact, I may be corrected--

Q This calls for a yes or no answer.

A No.

Q Now, Mr. Hazell, were you ever criticized by any nurses at all about talking to employees when you should have been working?

A No, no.

Q Were you ever--did anyone in management or any nurses or anyone ever tell you you were coming in late too often?

A No, no one ever mentioned that to me.

Q I direct your attention to Respondent's 11.

Mr. Hazell, I direct you to the top of it, and it says, "9/19, hired temporary."

Did you see Mrs. Harrington make such a notation on your application at the time of your interview?

A No, Miss Harrington could not have done that in my presence.

Q Why could she not have done that in your presence?

A B cause when first--first when I entered the office Miss Harrington was going through a pile of papers, then she was chatting with me at the same time, asking me questions here and there and whatnot, and the application was not on her desk. It was not--I hadn't seen her--she hadn't written anything, she hasn't done

anything on the application.

Q Did she tell you you were a temporary worker?

A No. As I stated in my statement, she told me I would be on trial for two weeks, and after that I will be on the staff.

Q Did she at any time complain to you that your working a split shift was in any way not desirable?

A From--since Mrs. Harrington spoke to me during the time of my employment at the interview, I have never spoken to Mrs. Harrington, neither has she spoken to me since, except for good morning, that's all.

Q Mr. Hazell, did you get a copy of this personnel policies form while you were employed at River Manor (handing document to witness)?

A Yes, I did.

Q Who gave it to you?

A Mrs. Russell.

Q Can you tell us about when that was?

A No. There were two forms given--two of these and there are slight differences between the two of them, which I do not remember the differences.

If this is the first one, it was given to me around December.

If it is the second, it was given to me

MR. KAUFMAN: Your Honor, may I be heard on this?

JUDGE COHN: Yes. Go ahead.

MR. KAUFMAN: I would like to join in Mr. Pollack's objection, but moreover this is supposed to be rebuttal and this witness on direct examination testified in great detail about how he works with Miss Link and how he works with Miss Russell, and certainly if counsel is just asking him questions to go over areas that he already covered on direct, that's improper for rebuttal.

MR. COFFEY: I don't think it's improper rebuttal at all, Your Honor.

JUDGE COHN: All right.

I will allow you to ask him whether or not what his interpretation of any of these phrases are.

MR. COFFEY: I haven't been asking him his interpretation.

JUDGE COHN: Ask him a couple of questions, if you wish, about that.

MR. COFFEY: All right.

BY MR. COFFEY:

Q I ask you again, Mr. Hazell, did at any time while you were employed at River Manor between September, or whenever you were employed, to January

when you were discharged, did there come a time that something unusual arose in regard to a patient or the facility?

A Yes. I remember there were cases where the toilet was leaking and water was all on the floor, and I, therefore, reported it to Miss Russell, or whoever was in charge then.

Q When you reported it to Mrs. Russell did she say, "Don't report this to me. Report it to someone else"?

MR. KAUFMAN: Objection.

JUDGE COHN: Sustained.

Q Did she tell you you should report-- you should not report this to her?

MR. KAUFMAN: Objection.

JUDGE COHN: Let him answer it.

She didn't tell you that, did she?

THE WITNESS: Well, no, but there wasn't anybody else in charge but Miss Russell. She didn't tell me that.

In fact, I remember many occasions--

JUDGE COHN: That's enough. That's enough.

MR. COFFEY: Okay.

Q During your tenure as an employee at R

MR. COFFEY: No further questions.

JUDGE COHN: You are finished, Mr. Coffey?

MR. COFFEY: Yes.

JUDGE COHN: Do you have anything--off the record.

(Discussion off the record.)

JUDGE COHN: Back on the record.

Cross-examination.

CROSS-EXAMINATION

BY MR. KAUFMAN:

Q Mr. Hazell, if I understood your testimony, when you were talking about Robinson and when you asked her to sign a card, am I right in saying that when you signed the book at 11:38 on the 9th, in your own mind you consider it to be the 9th for the whole shift, even thought it's past twelve o'clock and it's really the 10th, is that what you said?

A I didn't say that.

I said on the night of the 9th.

Q The night of the 9th--you came in 11:38 of the 9th; right?

A Yes.

Q Is that right?

A Yes.

Q And you signed the book?

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A Yes.

Q Now, it's 1:00 o'clock in the morning.

A Yes.

Q You consider that to be your shift for the night; is that right?

A Yes, I do.

Q And that's what you were telling Mr. Coffey, when you said between the 9th and the 10th, and you said it was the 9th, you mean the whole shift is the 9th?

A Are you saying the whole shift from 12 to 8 or 11:38 to --

Q You consider it to be the 9thm that's what you were telling Mr. Coffey; is that right?

A I was telling him of the night of the 9th, that's what I told him.

Q Well, the night of the ninth is the night you met Mr. McKinney?

A That's right.

Q All right.

And you got the cards and you came in to work at 11:38?

A That's right.

Q And you signed in the book--you were in the place now; right?

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A Yes.

Q And then you were telling Mr. Coffey that you gave a card to Miss Robinson sometime during that night?

A Yes.

Q And I think you told Mr. Coffey that you considered it--that it was after twelve that you gave the card to Miss Robinson, but you considered it to be the 9th?

A I can't remember telling Mr. Coffey that.

Q Well, is that what you considered it to be?

A Well, really I hadn't--I--I considered it to be the night of the 9th.

Q The whole night, while you were working is the whole night of the 9th?

A Well, yes.

Q Okay.

Now, after Miss Harrington interviewed you, you said you didn't see her write anything because she didn't have your employment application on the desk.

A That's right.

Q Would you know what she did as soon as you left the room?

A No, it's impossible for me to know what

she did.

MR. KAUFMAN: Okay. I have no further questions of this witness, other than to point out to Your Honor to ask you to take notice in reading the record that the date 1/11/75, which the witness testified that he had a conversation with Miss Robinson, Miss Robinson was not at the nursing home at work.

MR. POLLACK: In accordance with the time record book.

MR. KAUFMAN: In accordance with the time record book which has been introduced into evidence by General Counsel, and in accordance with the witness' interpretation of days.

MR. COFFEY: We would like a little redirect.

JUDGE COHN: Go ahead.

REDIRECT EXAMINATION

BY MR. COFFEY:

Q Now, Mr. Hazell, you testified that you gave Mrs. Robinson the card on the night of the 9th and that thereafter, on the night of the 11th, you talked to her about Mrs. Frazer's discharge, is that--right?

A Yes.

Q Counsel for Respondent has pointed out that

MR. POLLACK: Your Honor, this is re-direct of his own witness, and I just beg you watch Mr. Coffey and instruct Mr. Coffey not to lead this witness in a very critical area.

I know it may be an improper time to do it.

JUDGE COHN: Well, look, your understanding, you know, it's just a matter of examining it--you are not to lead your own witness.

MR. COFFEY: Right.

JUDGE COHN: You are not cross-examining this man. It's your own witness.

MR. COFFEY: Right.

BY MR. COFFEY:

Q Mr. Hazell, Respondent's attorney has pointed out that you--that Mrs. Robinson did not work on the 11th at all.

Can you tell us, with that piece of information, does that lead you to change your testimony?

MR. KAUFMAN: Objection.

MR. POLLACK: Your Honor, that's impeaching his own witness.

MR. COFFEY: It's not.

JUDGE COHN: I will let it in.

MR. COFFEY: I was justifiedly confused,

as we all are.

JUDGE COHN: Whenever I agree with you, you argue with me.

MR. COFFEY: I am sorry.

JUDGE COHN: Do you want me to sustain the objection?

Now, let's go ahead.

THE WITNESS: What is the question again?

MR. COFFEY: Would you read back the question?

(Whereupon, the last question was read back by the reporter.)

A Well, when I say the night of the 11th, I didn't specifically indicate that Mrs. Robinson worked the night of the 11th.

Mrs. Robinson lives a block from the nursing home.

JUDGE COHN: She what?

THE WITNESS: She is living about a block away and I usually go and see Mrs. Robinson and maybe I--personally I visit Mrs. Robinson. I always visit Mrs. Robinson.

MR. KAUFMAN: I didn't hear any of that.

JUDGE COHN: "I always visit Mrs. Robinson. She lives a block from the nursing home."

Q Is it your testimony, then, Mr. Hazell, that

you told Mrs. Robinson about Frazer's discharge at her home on the night of the 11th?

A Well, yes, because if Miss Robinson was on duty that night, then there would not have been any reason to tell her, me, in particular, because she would have heard in general.

MR. COFFEY: No further questions.

RECROSS-EXAMINATION

BY MR. KAUFMAN:

Q Do you have a specific recollection of telling Miss Robinson in her home about Miss Frazer?

A Yes, I remember telling her at her home.

Q You said if she had been on duty. Now I am asking--

A I said I remember telling her at home, specific--

Q Do you remember specifically telling her at home?

A Yes.

Q You do?

A Yes.

Q What time was that?

A Well, it has to be around--sometime before I went into work.

It could have been around eleven o'clock

or so.

Q About what time?

A About eleven. It could have been around there.

Q Eleven o'clock you went to Mrs. Robinson's home and that's what you told her?

A Yes.

MR. KAUFMAN: I have no further questions.

RE-REDIRECT EXAMINATION

BY MR. COFFEY:

Q So, you have--

JUDGE COHN: Wait a minute. I mean, now what--

MR. COFFEY: I have some further--I want to--

MR. POLLACK: Re-redirect?

MR. COFFEY: Further redirect.

JUDGE COHN: He asked like one or two questions.

MR. COFFEY: Right.

JUDGE COHN: Now you are limited in that area.

MR. COFFEY: Right.

Q So when you say you spoke to her on the night of the 11th at eleven o'clock, you mean--do you

Whereupon,

FRAULEIN BROWN

called as a witness by and behalf of the General Counsel, having been first duly sworn in, was examined and testified on her oath as follows:

DIRECT EXAMINATION

BY MR. COFFEY:

Q Mrs. Brown, state your name and address for the record.

A 344 Putnam Avenue.

Q Your name?

A Fraulein Brown.

Q And do you work at River Manor now?

A I should say yes. The answer is yes and the answer is no because I am home on disability.

Q When did you start working at River Manor?

A On the 30th of November, 1974.

Q As what?

A Nurse's aid.

Q What was your shift?

A Eight to four.

JUDGE COHN: You say the 13th of November?

THE WITNESS: The 30th of November.

JUDGE COHN: 30th of November?

THE WITNESS: Yes.

BY MR. COFFEY:

Q Did you ever work other than from eight to four, Mrs. Brown?

A Yes, Mr. Coffey. I worked seven to three.

MR. KAUFMAN: When was that?

Q When did you start working seven to three?

A If I can remember correctly, it could be about the 12th of January.

Q Now, how did you find out about the change in shift?

A I saw itin the schedule.

I saw my name on the schedule and by my name in small figures was seven to three, and we know then--it's an understanding among us that at any time we see something like that on the schedule, so we go by the schedule.

Q Where was the schedule posted?

A On the first floor.

Q Now, Mrs. Brown, did the schedule direct you to do any specific thing besides the shift?

A Well, my name was on the schedule and by my name was the second floor, which indicates what floor I should work on.

Q Now, after--after you received notice of this schedule change, did there arise a dispute concern-

ing this with anyone?

A Yes, Mr. Coffey.

MR. KAUFMAN: About the schedule change?

MR. COFFEY: Yes.

THE WITNESS: Yes.

Q What happened?

A On the second morning I was--

Q When was this? What time was this?

A I would say it was about the 13th.

Q Of?

A Of January.

Q All right. What happened?

A I was in the patient's room on the second floor--I think I was getting a patient dressed--and Miss Russell came along. She said to me--she didn't call my name, but I assume she was speaking to me.

She said, "You are to work where I put you to work."

I said, "I did not know this. I wasn't informed."

So I followed the schedule because my name is on the schedule to work the second floor.

She did not say anything to me. She left it at that, and I continued working following the schedule until the 20th, on or about the 20th of January.

Q What happened at that time?

A She came to me, I was in the Day Room--

Q This is Mrs. Russell?

A Yes. I was combing a patient's hair.

Q About what time of the day was this?

A It was about 7:30.

Q All right.

A And she said, "I am going to get even with you because I told you to work where I put you to work," and I said, "Well, until now you didn't put me to work anywhere, I still follow the schedule."

"As of today you work where you want to work because you are fired."

I said, "It's fine with me," and that was it.

MR. KAUFMAN: I didn't hear the last part.

JUDGE COHN: Read back that last part of the answer.

(Whereupon, the pertinent portion of the record was read back by the reporter.)

BY MR. COFFEY:

Q Now, did you continue working after that?

A Yes.

Q And was there any--did you have any further contact with Mrs. Russell about this?

A No.

Q Did -- how are you sure of the date?

A I am sure of the date in that Mrs. Terrell was fired on the 13th, I can remember clearly, because she called me from her home and told me that she was fired, and that was the day after I started my seven to three.

Q Now, Mrs. Brown--

A Yes, Mr. Coffey.

MR. POLLACK: Has the witness finished her answer, Mr. Coffey?

THE WITNESS: Yes.

JUDGE COHN: Yes.

MR. POLLACK: Okay. I just wanted to make sure.

MR. KAUFMAN: I am sorry. I am having a lot of trouble understanding parts of this testimony.

Can I have the last answer read back?

JUDGE COHN: Yes.

(Whereupon, the pertinent portion of the record was read back by the reporter.)

Q During your conversation in the Day Room with Mrs. Russell did she mention Mrs. Harrington's name at all?

A No.

MR. KAUFMAN: Well, I am going to object.

There are no allegations in the Complaint containing anything on the 20th involving this employee, and I am going to object to its relevancy or what it's rebutting at this point.

JUDGE COHN: Well, I am not sure--quite sure what he is rebutting unless it's something about, has to do with the supervisory capacity of Russell.

MR. COFFEY: That's one aspect of it.

The other aspect, Russell testified that she had no disputes with any other individuals. This is clearly a dispute.

JUDGE COHN: Okay.

MR. COFFEY: And--

JUDGE COHN: Let's get it over with.

MR. COFFEY: She testified--

JUDGE COHN: Mr. Coffey, let's get on with it.

MR. COFFEY: No further questions, Your Honor.

JUDGE COHN: Well, you said that before.

CROSS-EXAMINATION

BY MR. KAUFMAN:

Q After Miss Russell fired you, you continued to work?

A Yes.

Q You were never fired?

A No.

JUDGE COHN: This is cross-examination, I assume?

MR. POLLACK: Yes.

MR. KAUFMAN: Yes.

JUDGE COHN: Okay.

Let's go, Mr. Kaufman.

MR. COFFEY: I am finished.

JUDGE COHN: I said Kaufman.

Maybe I will ask a question while you are looking at the time book.

When Russell said you were fired, what did you do?

THE WITNESS: I did nothing.

JUDGE COHN: You kept working? You didn't leave the place?

THE WITNESS: No, I didn't.

I know she could not fire me.

I would have to be told by Miss Harrington that I am fired.

JUDGE COHN: Did Miss Harrington ever tell you you are fired?

THE WITNESS: No.

JUDGE COHN: All right.

Do you want to continue?

MR. KAUFMAN: Nothing else.

MR. POLLACK: Nothing, Your Honor.

JUDGE COHN: All right. Thank you.

THE WITNESS: You are welcome.

(Witness excused.)

MR. COFFEY: We call Brenda Frzer to the stand.

JUDGE COHN: You are still under oath, Miss Frazer.

Whereupon,

BRENDA FRAZER

was called as a witness by and on behalf of the General Counsel and having been previously duly sworn, was examined and testified further on her oath as follows:

DIRECT EXAMINATION

BY MR. COFFEY:

Q Mrs. Frazer, did you receive a copy of General Counsel's 27 at any time while you were employed (handing document to witness)?

A Yes, I received two of these.

Q Who gave them to you?

A Miss Russell.

Q Now, did there come a time while you were employed that a condition which appeared to be unusual,

either in regard to any patient or to the--in regard to the facility, anything like that ever arose?

A Yes. Well, I could say a patient was ill and I'd call Mrs. Russell, if that's what you are referring to.

Q Did you call anybody else besides Mrs. Russell?

A No, she was theonly nurse on duty.

Q Did there come a time while you were employed that there was an accident to any patient, visitor or employee?

A No, I worked nights and there is no visitors there.

Q Now, was there any time that patients made requests of you for anything during your tenure?

A Well, I can't say the patients requested anything of me, no.

I would have to say no.

Q When you were warned by Mrs. Russell about latenesses, how many times has that happened; once or twice?

A Once that I can remember.

Q Could there have been a second occasion?

a There might have been, but I don't know.

I can't say yes.

I know she warned me once.

Q At the time of your discharge did Mrs. Harrington say anything to you about lateness?

A No, she did not.

MR. COFFEY: Could we have a few seconds, Your Honor?

JUDGE COHN: A few, yes.

Q Did Mrs. Russell ever warn the entire shift as a group about latenesses?

A I don't remember a meeting like that, no.

MR. COFFEY: No further questions, Your Honor.

JUDGE COHN: Cross-examination.

MR. KAUFMAN: Can we see the statement?

MR. COFFEY: Yes.

MR. KAUFMAN: Mr. Coffey, forget about the statement.

MR. COFFEY: Thank you very much, because it's all mixed in somewhere.

MR. KAUFMAN: I just have one question of the witness.

CROSS-EXAMINATION

BY MR. KAUFMAN:

Q You say you don't recall any meeting by Miss Russell concerning a general discussion of lateness, is that correct?

A That's correct.

Q And am I also correct in assuming that the nursing home operates seven days a week?

JUDGE COHN: Excuse me--you just--just in your first question you said you don't recall any meeting by Russell?

MR. KAUFMAN: Yes, by Russell.

JUDGE COHN: Or Harrington?

MR. KAUFMAN: No, I think she mentioned Russell.

JUDGE COHN: In his question I thought he said with Harrington.

MR. COFFEY: Did you have any meeting with Russell or Harrington.

MR. KAUFMAN: Wait a minute.

JUDGE COHN: You are finished. Wait a minute.

My notes--that's why I stopped you. I am sorry.

My notes indicated that his question related to Harrington calling a meeting.

Now you can ask her another question about Russell. All right, fine.

BY MR. KAUFMAN:

Q You don't recall any meeting by either Harrington or Russell--

A No.

Q (cont'g)--is that right?

A Yes.

Q Is it true that the nursing home operates seven days a week?

A Yes, it does.

Q And you are there five days a week; isn't that right?

A That's right.

Q There are a lot of days that you may not be there and Russell and Harrington might be there; isn't that right?

A That's correct.

Q So it's very possible that there could have been a meeting also; you might not have even been there that day; isn't that right?

A I wouldn't know.

MR. COFFEY: That calls for a conclusion, Your Honor.

Q So you wouldn't know--

JUDGE COHN: Don't interrupt.

If you want to make an objection, object.

Overruled.

Q You wouldn't know if there was a meeting or not if you weren't there?

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A That's right.

Q All you are testifying about is about on the days you were there?

A That's right.

MR. KAUFMAN: No further questions.

MR. POLLACK: I have nothing of this witness, Your Honor.

JUDGE COHN: Do you have anything else?

MR. COFFEY: No, Your Honor.

JUDGE COHN: Thank you, Miss Frazer.

(Witness excused.)

MR. COFFEY: We call Allrich Normil to the stand.

JUDGE COHN: Mr. Normil, you are still under oath.

THE WITNESS: Yes, sir.

MR. COFFEY: If I might have your indulgence a minute, I am trying to look for something which I lost -- okay, I have it.

MR. POLLACK: May we be off the record?

JUDGE COHN: Yes.

Off the record.

(Discussion off the record.)

JUDGE COHN: Back on the record.